

United States
Circuit Court of Appeals
For the Ninth Circuit.

PATRICK WALSH & SONS, INC., a Corporation
(Substituted as Complainant in the Place and
Stead of JOHN M. WALSH and THOMAS A.
KEARNEY, as Trustees), W. M. KEARNEY, and
W. S. BROWN, as Executor of the Last Will and
Testament of PATRICK WALSH, Deceased (Sub-
stituted as Complainant in the Place and Stead
of PATRICK WALSH),

Appellants,

vs.

MARY C. HILL et al.,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
Northern Division.

FILED

MAR 6 - 1930

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

PATRICK WALSH & SONS, INC., a Corporation
(Substituted as Complainant in the Place and
Stead of JOHN M. WALSH and THOMAS A.
KEARNEY, as Trustees), W. M. KEARNEY, and
W. S. BROWN, as Executor of the Last Will and
Testament of PATRICK WALSH, Deceased (Sub-
stituted as Complainant in the Place and Stead
of PATRICK WALSH),

Appellants,

vs.

MARY C. HILL et al.,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
Northern Division.

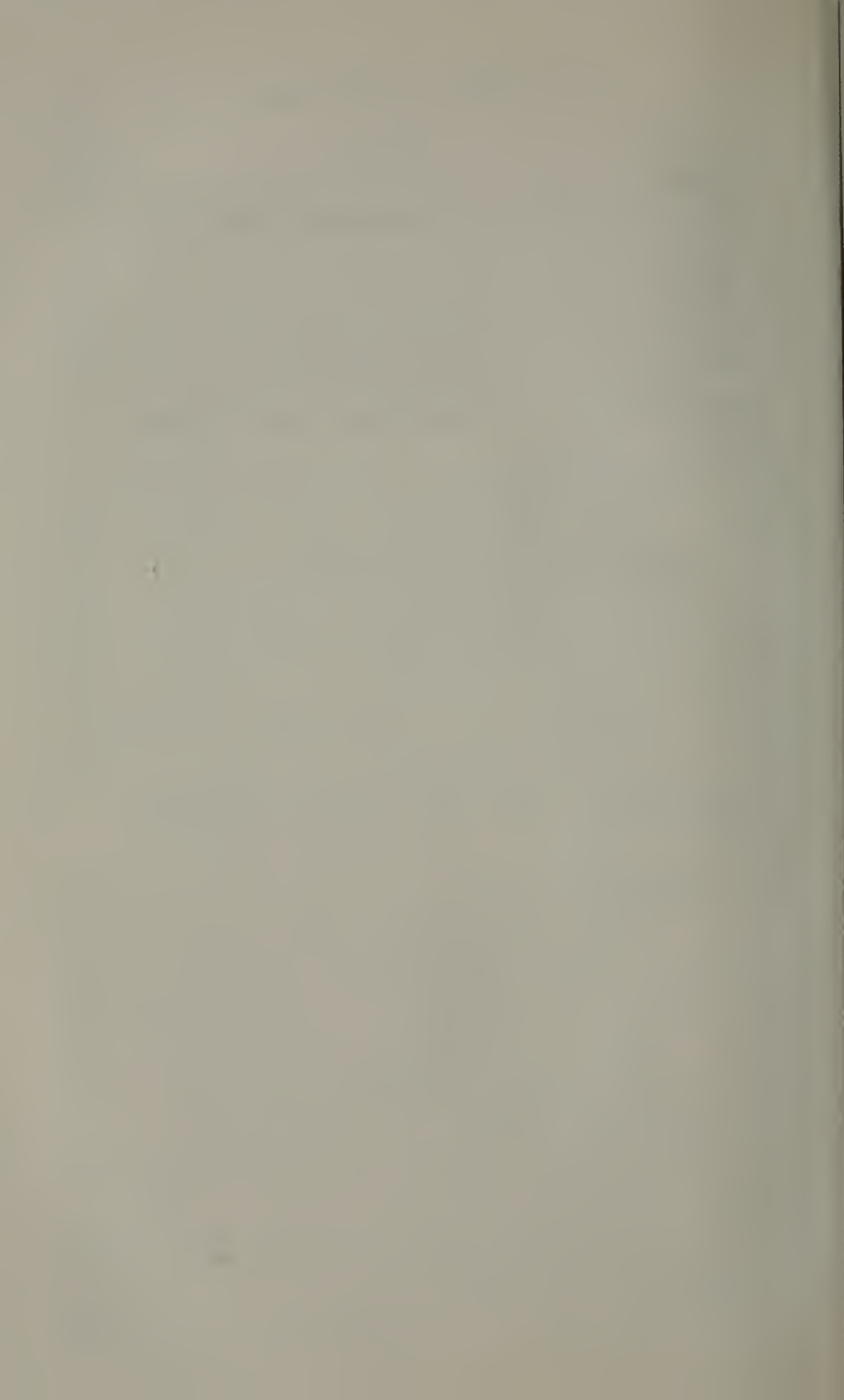
INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Complaint	2
Answer to Plaintiffs' Amended Complaint	35
Assignment of Errors	166
Bond on Appeal	168
Certificate of Clerk U. S. District Court to Transcript on Appeal	173
Citation	174
Condensed Statement of Testimony and Evi- dence	49
Decree	161
DEPOSITIONS ON BEHALF OF PLAIN- TIFFS:	
CASE, SEYMOUR	100
Cross-examination	103
Redirect Examination	111
HILL, MARY C.....	83
Cross-examination	94
JULIAN, GROVER C.....	83
LOWE, MISS ALCESTA	112
Cross-examination	112

Index.	Page
EXHIBITS:	
Exhibit "A"—Deed Dated December 15, 1917, Between Thomas Hill and Mary C. Hill	17
Exhibit "B"—Deed of Trust Dated December 20, 1922, Between Mary C. Hill et al. and Thomas A. Kearney et al.	19
Plaintiffs' Exhibit No. 2—Letter Dated October 19, 1922, Mary C. Hill et al. to W. M. Kearney and Financial Statement Dated September 25, 1922, Issued to Mary C. Hill and Thomas Hill Estate	55
Plaintiffs' Exhibit No. 4—Telegram Dated December 21, 1922, Bank of Lassen County to W. M. Kearney and Letter Dated December 21, 1922, C. H. Bridges to W. M. Kearney.....	60
Defendants' Exhibit "A"—Individual or Partnership Statement Issued to Bank of Lassen County by Thomas Hill...	77
Defendant Mary C. Hill's Exhibit "B"—Statement of Apportionment of \$42,000.00 Received from Patrick Walsh on Loan Issued by Seymour Case....	107
Memorandum Opinion (Dated October 18, 1928)	46
Memorandum Opinion (Dated November 22, 1929)	159
Minutes of Court—December 17, 1928—Order Granting Motions, etc.	47

Index.	Page
Minutes of Court—May 6, 1929—Trial	48
Names and Addresses of Attorneys of Record.	1
Order Allowing Appeal	167
Order Granting Motions, etc.	47
Petition for Order Allowing Appeal.	165
Praecipe for Transcript of Record.	172
TESTIMONY ON BEHALF OF PLAIN- TIFFS:	
JULIAN, GROVER C.	50
Cross-examination	52
KEARNEY, WILLIAM M.	54
Cross-examination	66
Redirect Examination	68
Recalled in Rebuttal	82
Recalled	113
Cross-examination	118
TESTIMONY ON BEHALF OF DEFEND- ANTS:	
BRIDGES, C. H.	120
Cross-examination	128
Redirect Examination	133
HILL, HUBERT W.	69
Cross-examination	73
Redirect Examination	74
HILL, THOMAS GAY	75
PARDEE, J. E.	76
Cross-examination	81
Recalled	133
Cross-examination	137
Trial	48



NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Attorneys for Appellants:

W. M. KEARNEY, Esq., Reno, Nev.

N. J. BARRY, Esq.

EDWARD F. TREADWELL, Esq., San
Francisco, Calif.

Attorneys for Appellees:

J. E. PARDEE, Esq., Susanville, Calif.

R. M. RANKIN, Esq., Willows, Calif.

In the Northern Division of the United States Dis-
trict Court, for the Northern Division of Cali-
fornia.

IN EQUITY—No. 198.

PATRICK WALSH & SONS INCORPORATED,
a Corporation (Substituted as Complainants
in the Place and Stead of JOHN M. WALSH
and THOMAS A. KEARNEY, as Trustees),
and W. M. KEARNEY and PATRICK
WALSH,

Complainants,

vs.

MARY C. HILL, MRS. SADIE CASE, CLEVE
HILL, JOSEPH HILL, ROBERT ELMER
HILL, THOMAS GAY HILL, LAWRENCE
HILL, JESSIE I. HILL, JIMMIE O. HILL,

FLORENCE HILL DOUGLAS, HUBERT W. HILL, MILDRED L. HILL, CHRISTINE V. DeFOREST, MAUDE B. McGREGOR, MARY C. HILL, as Administratrix of the Estate of THOMAS HILL, Deceased, JOHN DOE, RICHARD ROE, SALLY MOE FIRST and SALLY MOE SECOND,

Defendants.

AMENDED COMPLAINT.

Now come the complainants, Patrick Walsh & Sons Incorporated, a corporation (substituted as complainants in the place and stead of John M. Walsh and Thomas A. Kearney, as trustees), and W. M. Kearney and Patrick Walsh, and by leave of the court first had and obtained file this their amended bill of complaint, and complain of the defendants above named, and for cause of suit allege:

I.

That the complainants and each of them are and were at all times herein mentioned citizens, residents and inhabitants of the State and District of Nevada.

II.

That the defendants are and each of them is and was at all [1*] times herein mentioned citizens, residents and inhabitants of the State of California.

III.

That the matter in controversy in this suit, ex-

*Page-number appearing at the foot of page of original certified Transcript of Record.

clusive of interest and costs, exceeds the sum of \$3,000.

IV.

That on May 25, 1923, Mary C. Hill was, by an order and decree of the Superior Court of the State of California, in and for the County of Lassen, duly appointed administratrix of the estate of Thomas Hill, deceased, and thereafter duly qualified as such, and is now and at all times after said date has been the duly qualified and acting administratrix of the estate of Thomas Hill, deceased.

V.

That the said Patrick Walsh & Sons Incorporated, a corporation, is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada and is a citizen and resident of the State of Nevada.

VI.

That prior to any of the times herein mentioned the said Thomas Hill and the said Mary C. Hill were husband and wife, and the said Thomas Hill was the owner in fee, in the possession and entitled to the possession of those certain lots, pieces and parcels of land situate, lying and being in the County of Lassen, State of California, and more particularly bounded and described as follows, to wit:

The W. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the SW. $\frac{1}{4}$ of Section 2; the E. $\frac{1}{2}$, SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and the NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 3; the E. $\frac{1}{2}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of

SW. $\frac{1}{4}$ of Section 4; the E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of Section 8; the N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of SE. $\frac{1}{2}$ and W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 9; the N. $\frac{1}{2}$ of N. $\frac{1}{2}$ and SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 10; the W. $\frac{1}{2}$, W. $\frac{1}{2}$ of E. $\frac{1}{2}$ and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 11; the NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of Section 14; [2] also a piece of land bounded as follows: Beginning at a point 10 chains west of the corner of Sections 11, 12, 13 and 14 and running thence South 15 chains; thence South 58° 45' West, 11.72 chains to the quarter-quarter line; thence north along said quarter-quarter line 21.10 chains to the line between Sections 11 and 14; thence east 10 chains to the place of beginning, being in said Section 14, all in Township 31 North, Range 12 East, M. D. M.;

Also the SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Section 34, and the W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 35, in Township 32 North, Range 12 East, M. D. M.;

Also the N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 2, and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 3, in Township 31 North, Range 11 East, M. D. M., containing in all 3, 218.58 acres, more or less according to Government Survey.

VII.

That on the 15th day of December, 1917, the said Thomas Hill signed and executed a deed conveying all of the said property to his said wife, Mary C. Hill, and thereupon on the said 15th day of December, 1917, duly acknowledged the same before a

notary public in and for the said county and state, duly authorized to take such acknowledgments, and thereupon delivered the said instrument in the presence of the said Mary C. Hill to one Grover C. Julien with instructions to hold the same until the death of the said Thomas Hill, and then hand the same to the said Mary C. Hill; and said complainants are informed and believe and on such information and belief allege that the said deed was on the said 15th day of December, 1917, duly delivered by the said Thomas Hill to the said Mary C. Hill in the manner aforesaid and with the intent and purpose that title to the said property should vest in the said Mary C. Hill, subject to a life estate in the said Thomas Hill. A copy of the said deed is hereunto annexed, marked Exhibit "A" and made a part hereof.

VIII.

Thereafter the said Thomas Hill died, and thereupon and [3] on or about the 8th day of August, 1922, the said Grover C. Julien handed the said deed to the said Mary C. Hill and she recorded the same on the 8th day of August, 1922, at thirty minutes past two o'clock P. M. in the office of the County Recorder of the said county and state, and the same was thereupon recorded in Book 9 of Deeds, at page 266. Thereafter and on or about the 20th day of December, 1922, the plaintiffs, W. M. Kearney and Patrick Walsh loaned and advanced to the said Mary C. Hill the sum of \$50,000 evidenced by two certain promissory notes executed by said Mary C.

Hill and her children, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest and Maud B. McGregor, in words and figures following, to wit:

\$8000.00

Reno, Nevada,

December 20th, 1922.

One year after date, without grace, for value received, we, or either of us, promise to pay to W. M. Kearney, or order, at Reno, Nevada, the sum of Eight Thousand Dollars in lawful money of the United States of America, with interest thereon in like lawful money at the rate of eight per cent per annum from date until paid. Interest payable semi-annually, also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker or makers thereof, or either of them. In the event of the non-payment of this said note at maturity, or at its collection by suit, we, or either of us, agree to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end bind ourselves, our heirs, executors, administrators and assigns forever. For the purpose of attachment or levy of execution, this note shall

be payable wherever we, or either of us, may be situated, at the option of the holder.

MARY C. HILL.

MRS. SADIE CASE.

CLEVE HILL.

JOSEPH HILL.

ROBERT ELMER HILL.

THOMAS GAY HILL.

LAWRENCE HILL.

JESSIE I. HILL.

JIMMIE O. HILL.

FLORENCE HILL DOUGLAS.

HUBERT W. HILL.

MILDRED L. HILL.

CHRISTINE V. DeFOREST.

MAUD B. McGREGOR.

By MARY C. HILL,

Their Attorney-in-fact.

(1.60 Documentary Stamps cancelled.) [4]

\$42,000.00

Reno, Nevada.

December 20th, 1922.

Three years after date, without grace, for value received, we, or either of us, promise to pay to Patrick Walsh, or order, at Austin, Nevada, the sum of Forty-two Thousand Dollars in lawful money of the United States of America, with interest thereon in like lawful money at the rate of eight per cent per annum from date until paid. Interest payable semi-annually, also after judgment.

The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this

note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker or makers thereof, or either of them. In the event of the non-payment of this said note at maturity, or its collection by suit, we, or either of us, agree to pay all expenses that may be incurred thereby, including a reasonable attorney's fee, and to that end bind ourselves, our heirs, executors, administrators, and assigns forever. For the purpose of attachment by levy or execution, this note shall be payable wherever we, or either of us, may be situated, at the option of the holder.

MARY C. HILL.

MRS. SADIE CASE.

CLEVE HILL.

JOSEPH HILL.

ROBERT ELMER HILL.

THOMAS GAY HILL.

LAWRENCE HILL.

JESSIE I. HILL.

JIMMIE O. HILL.

FLORENCE HILL DOUGLAS.

HUBERT W. HILL.

MILDRED L. HILL.

CHRISTINE V. DeFOREST.

MAUD B. McGREGOR.

By MARY C. HILL,

Their Attorney-in-fact.

(\$8.40 Documentary Stamps cancelled.)

IX.

That at the time of the delivery of the said notes

and the payment of said sum, and to secure the payment of the said principal sum and the interest thereon, as mentioned in said notes, the said Mary C. Hill and her said children duly executed and delivered to the plaintiffs, John M. Walsh and Thomas A. Kearney, as trustees, their deed of trust bearing date the 20th day of December, 1922, conveying unto them the land and premises above described. A copy [5] of said deed of trust is attached hereto marked Exhibit "B" and made a part hereof.

X.

The said trust deed was duly acknowledged so as to entitle it to be recorded, and on the 3d day of January, 1923, the same was duly recorded in the office of the County Recorder of Lassen County, California, in Book C of Trust Deeds, at page 249 and following.

XI.

That at and prior to the time that the said complainants so advanced and loaned the said sum of money to the said Mary C. Hill the said land above described was subject to certain liens created thereon by the said Thomas Hill and Mary C. Hill, to wit:

(1) On or about the 15th day of December, 1917, the said Thomas Hill and the said Mary C. Hill borrowed the sum of \$30,000 from Farmers & Merchants National Bank of Reno, Nevada, and, in order to secure the payment thereof, together with interest on \$15,000 thereof at eight per cent per annum, and on \$15,000 thereof at seven per cent per

annum, made, executed and delivered to Richard Kirman and Walter J. Harris a deed of trust by which the said property was conveyed to the said Richard Kirman and Walter J. Harris in trust, which said deed of trust was thereafter on the 15th day of December, 1917, duly recorded in the office of the County Recorder of the County of Lassen, State of California, in Book B of Deeds at page 500 and following; and at the time the plaintiffs so loaned and advanced the said money to the said defendants the principal and interest due on the indebtedness referred to in the said deed of trust was unpaid and the said land was subject to a lien therefor.

(2) On or about the 10th day of July, 1921, the said Thomas Hill and the said Mary C. Hill made, executed and delivered to one Georgiana F. Lonkey a mortgage upon the said land to secure the payment of the sum of \$27,200 on the 10th day of July, 1923, together [6] with interest at six per cent per annum, which mortgage was duly recorded in the office of the Recorder of the County of Lassen, State of California, on the 23d day of August, 1921, in Book R of Mortgages at page 193 and following. At the time the said plaintiffs so loaned the said money to the said Mary C. Hill the indebtedness secured by the said mortgage and recited therein was unpaid, and the said property was subject to the lien of the said mortgage.

XII.

That the said Mary C. Hill requested the plain-

tiffs herein to advance and loan to her the said sum of money so loaned by the said plaintiffs to her for the express purpose of paying and discharging the said liens upon the said land, and the said plaintiffs so loaned and advanced the said money for the express purpose of paying and discharging the said liens, and the said plaintiffs, themselves, at the direction of the said Mary C. Hill, saw to it that the said money was applied to discharge the said liens and the said indebtedness; and thereupon the said plaintiffs did, under the direction of the said Mary C. Hill, apply the said money so loaned by them to her upon said indebtedness as follows: They paid to the said Richard Kirman and Walter J. Harris on the principal and interest due upon the said indebtedness secured by the said deed of trust to said Richard Kirman and Walter J. Harris the sum of \$32,050, and the same was received by the said Richard Kirman and Walter J. Harris in satisfaction of the said indebtedness, and thereupon the said Richard Kirman and Walter J. Harris reconveyed all the right, title, interest and estate in and to the said property which they obtained by the said deed of trust to the said Mary C. Hill. The said plaintiffs paid to the said Georgiana F. Lonkey the sum of \$14,800 upon the principal and interest due to the said Georgiana F. Lonkey and evidenced by the said mortgage and secured thereby. In consideration of the said payment to the said Georgiana [7] F. Lonkey the said Georgiana F. Lonkey released the said land from the lien of the said mortgage, and duly recorded in the office of the Recorder of the

County of Lassen, State of California, a release of the said land from said mortgage.

XIII.

At the time that the said plaintiffs so loaned the said money to the said Mary C. Hill they believed that the said Mary C. Hill was the owner in fee of the said property and that the said deed from the said Thomas Hill to Mary C. Hill was duly delivered to her, and believed and intended that by the said deed of trust so executed by the said Mary C. Hill to the complainants they would obtain and did obtain a first and valid lien upon the fee-simple title to the said land, and the said Mary C. Hill likewise believed and represented to the plaintiffs that she was the owner in fee of the said land and that the said plaintiffs would acquire a first lien on the fee-simple title to the said land.

XIV.

Notwithstanding the premises, the said defendant Mary C. Hill thereafter and on or about the 25th day of May, 1923, had herself appointed administratrix of the estate of Thomas Hill, deceased, and thereupon the said Mary C. Hill and the other defendants herein claimed that the said Thomas Hill was the owner of the said land and the said defendants ever since said time have threatened to convey the said land as the property of the said Thomas Hill and his estate; that the claims of the said defendants and any conveyance made by them of the said property as the property of the said Thomas Hill or his estate will create a cloud upon

the said property and the title of plaintiffs thereto.
[8]

XV.

That the said Thomas Hill and his estate and the defendants herein are estopped from denying or disputing the due delivery of the said deed from said Thomas Hill to Mary C. Hill, and in this behalf complainants allege that the said instrument was prepared by the direction of the said Thomas Hill, and was signed by him with the knowledge of the said Mary C. Hill, and was acknowledged by him in such a manner as to entitle the same to be recorded, and was with the knowledge and in the presence of the said Mary C. Hill put in the custody of one Grover C. Julien, an attorney at law, with directions to said Grover C. Julien to hold the same and upon the death of the said Thomas Hill to hand the same to said Mary C. Hill to be recorded, and the said Thomas Hill and the said Mary C. Hill thereby placed the said instrument in such a position that the same would in the natural order of events be recorded and become a public record, and the same was so handed to the said Mary C. Hill and placed of record as aforesaid; and the said complainants, relying upon the said instrument and the record thereof, and believing that the same had been duly delivered, and having no knowledge or information to the contrary, advanced said money on the faith of the said instrument; and at the time of so advancing said money the said plaintiffs had no knowledge, notice or information in any way disparaging the apparent title of the said Mary C. Hill to the

said land, and they advanced the said money in good faith in reliance upon such title.

XVI.

The said plaintiffs W. M. Kearney and Patrick Walsh have ever since been the owners and holders of the said promissory notes set forth herein, and no part of the principal or interest due thereon has ever been paid. [9]

XVII.

Since the commencement of this action, the said indebtedness being entirely unpaid, the said John M. Walsh and Thomas A. Kearney, as trustees under the said deed of trust, sold all of the said property in accordance with the provisions of the said deed of trust and at the sale thereof the said Patrick Walsh & Sons Incorporated, a corporation, made the highest and best bid for the said property and purchased the same for the amount due on the said indebtedness, less the sum of \$5,000 which is still due and unpaid. Thereupon the said trustees, in pursuance of the terms of the said deed of trust, duly conveyed the said property to the said Patrick Walsh & Sons Incorporated, a corporation, and it ever since has been and now is the owner thereof, and all adverse claims of the defendants thereto are without right. The said Patrick Walsh & Sons Incorporated is a corporation formed and controlled by the said Patrick Walsh, and all the stock thereof is owned or controlled by him, and plaintiffs W. M. Kearney and Patrick Walsh received no money whatever upon said sale, and the said cor-

poration holds the said land for their use and benefit.

XVIII.

That the complainants have no plain, speedy or adequate remedy in the ordinary course of law.

WHEREFORE, complainants pray:

1. That it be adjudged that the defendants and the estate of Thomas Hill, deceased, have no right, title, interest or estate in or to the said property, and that they be enjoined and restrained from conveying or encumbering the same as the property of Thomas [10] Hill or of his estate, and that the title of plaintiffs to the said property be quieted against the said defendants.

2. That, if it should be held that the said plaintiffs failed to obtain a valid first lien on the fee-simple title to the said property by the said deed of trust, Exhibit "B," they be subrogated to the said liens of the said Richard Kirman and Walter J. Harris and the said Georgiana F. Lonkey.

3. That it be adjudged that the defendants and the said Thomas Hill and his estate are estopped from denying the delivery of the said deed, Exhibit "A," and the title of the said Mary C. Hill and the validity of the said deed of trust, Exhibit "B."

4. That, if it should be held by the court that the said plaintiffs are not the owners of the said property, but that they are entitled to be subrogated to the said liens of Richard Kirman and Walter J. Harris and Georgiana F. Lonkey, that the Court order said property to be sold, and that the same be sold under the direction of the Court, and

that the proceeds of the said sale be applied and paid to the plaintiffs in discharge of the amount advanced by them upon the said liens, together with interest thereon, and that any balance thereof be paid to the defendants, and that the said plaintiffs in that event have judgment against the defendants other than Mary C. Hill as administratrix of the estate of Thomas Hill, deceased, for any deficiency remaining under the said deed of trust, Exhibit "B."

5. That, if it should be held by the court that the said plaintiffs are not the owners of the said property, it be adjudged that any right or title in or to the said property to which the said Mary C. Hill or her said children might be or become entitled as heirs at law of said Thomas Hill, deceased, be declared to be subject to the said deed of trust, Exhibit "B"; and that any money to [11] which the said Mary C. Hill or her children might otherwise be or become entitled by reason of the sale of the said property in the matter of the estate of Thomas Hill, deceased, be declared to be subject to the said deed of trust, Exhibit "B."

6. That if it should be held by the Court that the said sale of said property did not pass title to said property to plaintiff Patrick Walsh & Sons Incorporated, the said sale be vacated and set aside, and plaintiffs recover judgment for the full amount of said indebtedness against the defendants other than the administratrix of the estate of Thomas Hill, deceased.

7. That the complainants recover their costs of suit herein, and for such other and further relief as may be meet in the premises and agreeable to equity.

W. M. KEARNEY,
N. J. BARRY,
EDWARD F. TREADWELL,
Solicitors for Complainants. [12]

EXHIBIT "A."

THIS INDENTURE, made this 15th day of December, 1917, BETWEEN Thomas Hill of Lassen County, California, the party of the *party of the* first part, and MARY C. HILL, his wife of the same County and State, the party of the second part:—

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, and to her heirs and assigns forever, all those certain lots, pieces and parcels of land, situate in the County of Lassen, State of California, and described as follows, to wit:

The W. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the SW. $\frac{1}{4}$ of Section 2; the E. $\frac{1}{2}$, SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and the NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 3; the E. $\frac{1}{2}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Section 4; the E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of Section 8; the N. $\frac{1}{2}$, N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and the W. $\frac{1}{2}$

of SW. $\frac{1}{4}$ of Section 9; the N. $\frac{1}{2}$ of N $\frac{1}{2}$ and the SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 10; the W. $\frac{1}{2}$, W. $\frac{1}{2}$ of E. $\frac{1}{2}$ and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 11; the NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of Section 14; also a piece of land bounded as follows: Beginning at a point 10 chains west of the corner of Sections 11-12-13 and 14, and running thence south 15 chains; thence south 58 degrees 45' West 11.72 chains to the quarter-quarter line; thence north along said quarter-quarter line 21.10 chains to the line between Sections 11 and 14; thence east 10 chains to the place of beginning, being in Section 14, all of said land above described being in Township 31 North of Range 12 East, M. D. M.

Also the SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Section 34, and the W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 35, in Township 32 North of Range 12 East, M. D. M. [13]

Also the N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 2, and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 3, in Township 31 North of Range 11 East, M. D. M.

Containing in all 3,218.58 acres of land, more or less according to Government Survey.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the water and water rights incident thereto, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, with the appurtenances, unto the said party of the second part, her heirs and assigns FOREVER.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

THOMAS HILL.

(Ninety-five Dollars Documentary Stamps affixed and cancelled.)

State of California,
County of Lassen,—ss.

On this 15th day of December, in the year One Thousand Nine Hundred and Seventeen, before me, Alcesta Lowe, a Notary Public, in and for the County of Lassen, personally appeared Thomas Hill, known to me to be the person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the County of Lassen, the day and year in this certificate first above written.

[Seal] ALCESTA LOWE,
Notary Public in and for the Co. of Lassen, State
of California.

[Endorsed]: Recorded at the request of Cleveland Hill August 8, 1922, at 30 min. past 2 o'clock P. M. at page 266 in Book 9 of Deeds, Lassen County Records, C. L. Ramsey, Recorder, By Grace B. Ramsey, Deputy. [14]

EXHIBIT "B."

THIS DEED OF TRUST, made and entered into this 20th day of December, A. D. 1922, between

MARY C. HILL, a widow, and MRS. SADIE CASE, CLEVE HILL, JOSEPH HILL, ROBERT ELMER HILL, THOMAS GAY HILL, LAWRENCE HILL, JESSIE I. HILL, JIMMIE O. HILL, FLORENCE HILL DOUGLASS, HUBERT W. HILL, MILDRED L. HILL, CHRISTINE V. DeFOREST and MAUD B. McGREGOR by MARY C. HILL their attorney in fact under power of attorney, all of Lassen County, State of California, parties of the first part, and THOMAS A. KEARNEY, of Reno, Washoe County, Nevada, and JOHN M. WALSH of Austin, Lander County, Nevada, parties of the second part, and PATRICK WALSH, of Austin, Lander County, Nevada, and W. M. KEARNEY, of Reno, Washoe County, Nevada, parties of the third part,

WITNESSETH:

That the said parties of the first part have granted, bargained, sold and convey, and do hereby grant, bargain, sell and convey, unto the parties of the second part, in joint tenancy, and to the survivor of them, their successors and assigns, all that certain real property situated in the County of Lassen, State of California, and described as follows:

The W. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the SW. $\frac{1}{4}$ of Section 2; the E. $\frac{1}{2}$, SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and the NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 3; the E. $\frac{1}{2}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Section 4; the E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of Section 8; the N. $\frac{1}{2}$,

N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 9; the N. $\frac{1}{2}$ of N. $\frac{1}{2}$ and the SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 10; the W. $\frac{1}{2}$, W. $\frac{1}{2}$ of E. $\frac{1}{2}$ and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 11; the NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of Section 14; also a piece of land bounded as follows: Beginning at a point 10 chains west of the corner of Sections 11-12-13 and 14, and running thence South 15 chains; thence South $58^{\circ} 45'$ West, 11.72 chains to the quarter-quarter line; thence north along said quarter-quarter line 21.10 chains to the line between Sections 11 and 14; thence east 10 chains to the place of beginning, being in said Section 14, all in Township 31 North, Range 12 East, M. D. M. [15]

Also the SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Section 34, and the W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 35, in Township 32 North, Range 12 East, M. D. M.

Also the N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 2, and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 3, in Township 31 North, Range 11 East, M. D. M., containing in all 3,218.58 acres, more or less according to Government Survey.

TOGETHER with all water and water rights, ditches and ditch rights, easements and privileges appurtenant and incident thereto or used or useful in connection with the aforesaid premises.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or hereafter to be placed thereon, or in any-

wise appertaining; and, also all the estate, right, title and interest, or other claim or demand, as well in law as in equity, which the parties of the first part now have, or may hereafter acquire of, in or to the said premises, or any part thereof, with the appurtenances, hereby abandoning all right of homestead in and to said premises and hereby expressly waiving any and all equity of redemption and agreeing to warrant and defend the title to the same.

TO HAVE AND TO HOLD unto the said parties of the second part, as joint tenants, with the right of survivorship, as such, their successors and assigns, IN TRUST, NEVERTHELESS, for the uses and purposes hereinafter limited and described; namely:

This Deed of Trust, however, is intended as a deed of trust and mortgage to secure the payment of two promissory notes in the words and figures, following, to wit:

“\$8,000.00

Reno, Nevada,

December 20th, 1922.

McDow xx “One year after date, without grace, for value received, we, or either of us, promise to pay to W. M. KEARNEY, or order, at Reno, Nevada, the sum of Eight Thousand Dollars in lawful money of the United States of America, with interest thereon in like lawful money at the rate of eight per cent per annum from date until paid. Interest payable semi-annually, also after judgment. [16]

“The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker *of* makers thereof or either of them. In the event of the non-payment of this said note at maturity, or its collection by suit, we, or either of us, agree to pay all expenses that may be incurred thereby, including a reasonable attorney’s fee, and to that end bind ourselves, our heirs, executors, administrators and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever we, or either of us, may be situated, at the option of the holder.

“MARY C. HILL.

“MRS. SADIE CASE.

“CLEVE HILL.

“JOSEPH HILL.

“ROBERT ELMER HILL.

“THOMAS GAY HILL.

“LAWRENCE HILL.

“JESSIE I. HILL.

“JIMMIE C. HILL.

“FLORENCE HILL DOUGLASS.

“HUBERT W. HILL.

“MILDRED L. HILL.

“CHRISTINE V. DeFOREST.

“MAUD B. McGREGOR.

“By MARY C. HILL,

“Their Attorney-in-fact.”

(\$1.60 Documentary Stamps cancelled.)

“\$42,000.00

Reno, Nevada,

December 20th, 1922.

McDow xx “Three years after date, without grace, for value received, we, or either of us, promise to pay to PATRICK WALSH, or order, at Austin, Nevada, the sum of Forty-two Thousand Dollars in lawful money of the United States of America, with interest thereon in like lawful money at the rate of eight per cent. per annum from date until paid. Interest payable semi-annually, also after judgment.

“The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker of makers thereof, or either of them. In the event of the non-payment of this said note at maturity, or its collection by suit, we, or either of us, agree to pay all expenses that may be incurred thereby, including a reasonable attorney’s fee, and to that end bind ourselves, our heirs, executors, administrators and assigns forever. For the purpose of attachment or levy of execution, this note

shall be payable wherever we, or either of us, may be situated, at [17] the option of the holder.

“MARY C. HILL.

“MRS. SADIE CASE.

“CLEVE HILL.

“JOSEPH HILL.

“ROBERT ELMER HILL.

“THOMAS GAY HILL.

“LAWRENCE HILL.

“JESSIE I. HILL.

“JIMMIE O. HILL.

“FLORENCE HILL DOUGLASS.

“HUBERT W. HILL.

“MILDRED L. HILL.

“CHRISTINE V. DeFOREST.

“MAUD B. McGREGOR.

“By MARY C. HILL,

“Their Attorney-in-fact.”

(\$8.40 Documentary Stamps Cancelled.)

To secure the payment to the said parties of the third part, of the sum of Eight Thousand Dollars (\$8,000.00) and Forty-two Thousand Dollars (\$42,000.00), respectively, lawful money of the United States of America, and interest thereon according to the terms of the two promissory notes set forth herein, made, executed and delivered by the said parties of the first part and payable to the order of the said parties of the third part respectively; also, to secure the payment of any and all sums of money, checks, bills, promissory notes, bonds, liens, balances of account, over-drafts or other indebtedness, which are now, or may hereafter during the

continuance of this trust, be, or become due or owing from the parties of the first part, or either of them, to the said parties of the third part, or for which said parties of the first part, or either of them, may be, or shall become in any manner liable to the said parties of the third part, together with interest on all of such indebtedness, from the date and creation of the same to the date of the repayment to the said parties of the third part, at the rate of eight per cent. per annum on all such indebtedness, or such other rate as may be agreed upon where the indebtedness is evidenced [18] by an instrument in writing. Also, to secure the repayment, on demand, of any sum, or sums, advanced at any time during the continuance of this trust by the party of the third part, for the payment of any taxes, assessment, liens or encumbrances now subsisting or which may hereafter be levied or imposed upon said premises, or any part thereof, which may, in the judgment of the parties of the third part, affect said premises or this trust. Also, to secure the repayment, on demand, of any and all sums paid out by the parties of the second part or third part, in intervening in, prosecuting or defending any action or proceeding, wherever, in their judgment, it may be necessary to do so, in order to protect the title to said property or this trust. Also, to secure the repayment by parties of the first part, of the expenses incurred for such repairs or prevention of waste upon said premises as may have been deemed necessary by parties of the third part, or their successors or assigns. Also, to secure the pay-

ment of interest on all of said advances and expenses from the time they are made or incurred to the time of repayment, at the rate of eight per cent. per annum, payable semi-annually, after the 20th day of December, 1922, or *wuch* other rate as may be expressly agreed upon in writing.

All indebtedness and advances not evidence by any instrument in writing wherein it is otherwise provided and the interest thereon, shall be due and payable, on demand, in lawful money of the United States of America.

The parties of the first part have full notice that the parties of the second part are relatives of the parties of the third part, and hereby consent that they act as Trustees and parties of the second part, and waive all objections thereto. The parties of the first part shall be entitled only to [19] notice of the names and addresses of any substituted Trustee or Trustees at the time or after substitution is made, and hereby consent to this provision.

In case the parties of the first part shall well and truly pay, or cause to be paid at maturity, to the parties of the third part, or their successors or assigns, in lawful money as aforesaid, the promissory notes, and all other indebtedness hereinafore mentioned, when the same shall become due, with interest as hereintofore specified, and all sums paid out and expended, together with interest, on demand, as hereinbefore provided, then the parties of the second part, the survivor of them, their successors and assigns, shall reconvey all the estate in said premises, to them by this instrument granted,

to the parties of the first part, their heirs or assigns, at their request and cost.

If default shall be made in the payment of said notes first mentioned, or any portion thereof, or any installment of interest thereon when due, or any indebtedness evidenced by any instrument in writing, as aforesaid, or in the reimbursement of any moneys, as herein provided to be paid out and expended, or any advances for taxes, liens, encumbrances, etc., or any other sum due to parties of the third part, with the interest thereon, on demand, as hereinabove expressed, then it shall be lawful for the said parties of the second part, or the survivor of them, their successors or assigns, on the application of the parties of the third part, or their successors or assigns, to sell the above granted premises, or such part thereof, as in their discretion, they shall find it necessary to sell in order to accomplish the objects of this trust, in the manner following, to wit: [20]

They shall publish notice of the time and place of such sale, with a description of the property to be sold, at least one time a week for three successive weeks, in some newspaper, published in the County of Lassen, State of California, and may from time to time, postpone such sale by publication, and on the day of sale so advertised, or to which such sale may be postponed, at the place named, they may sell the property so advertised, as a whole or in subdivisions, as the parties of the second and third part may deem best, at public auction, in any county where any part of said property may be

situated, in the State of California, to the highest bidder for cash, in lawful money of the United States of America; and at such sale the holder of any note or instrument in writing, or of any of the indebtedness, or any one who has made any of the advances hereinbefore mentioned, or the parties of the third part, may bid and purchase the whole or any part of said premises.

And the parties of the second part, or the survivor of them, their successors or assigns, are hereby authorized to execute and shall execute, and after due payment, made, shall deliver to the purchaser or purchasers, at such sale, deed or deeds of grant, for the property sold, and in any such deed, are authorized to recite any and every matter of fact necessary to authorize such sale and deed and such sale and deed and such recital shall be conclusive evidence against parties of the first part of the existence of the matters so recited and of every other matter or fact necessary, to authorize such sale, whether such matter or fact is recited in such deed or not, and any such deed or deeds, with such recitals therein, shall be effectual and conclusive against said parties of the first part, their heirs and assigns, and all other persons. And the receipt for the purchase [21] money contained in any deed executed to a purchaser at such sale, as aforesaid, shall be sufficient discharge of such purchaser from all obligation to see to the proper application of the purchase money according to this trust.

Out of the proceeds of such sale, the parties of the second part shall:—

FIRST: Pay the expenses of sale, including the cost of publication and counsel fee of an amount equal to five (5) per cent of the amount due and remaining unpaid, in lawful money of the United States of America, which shall become due upon any default made by the parties of the first part, in any of the payments aforesaid. And, also such sums, if any, as the parties of the second part, or the parties of the third part, shall have paid or become liable to pay for procuring an abstract, or continuation thereof, or certificate, or report of the title to said real property, or any portion thereof, subsequent to the execution of this deed of trust.

SECOND: They shall retain a sufficient sum to discharge all the indebtedness and interest due from parties of the first part to the parties of the third part, or their successors or assigns, as hereinbefore specified; and all sums which may have been advanced or expenses incurred by parties of the third part, or parties of the second part, for any of the purposes hereinbefore specified, with the interest thereon, and apply the same in pursuance of this trust, to wit: eight-fiftieths ($8/50$) to W. M. Kearney, his heirs, successors or assigns, and forty-two fiftieths ($42/50$) to Patrick Walsh, his heirs, successors or assigns, such representing their respective interests therein.

THIRD: The surplus, if any, they shall pay to the parties of the first part, their successors or assigns, on demand. [22]

IT IS EXPRESSLY COVENANTED that the parties of the third part, may from time to time,

appoint other trustee or trustees, to execute the trusts hereby created; and upon such appointment and a conveyance to them, by the parties of the second part, the survivor of them, their successors or assigns, the new trustees shall be vested with all the title, interest, power, duties and trusts in the premises hereby vested in or conferred upon the parties of the second part. Such new trustees shall be considered the successors and assigns of the parties of the second part, within the meaning hereof.

The parties of the second part, or the parties of the third part, may commence, prosecute, intervene in, or defend any action or proceeding in any court of competent jurisdiction, whenever, in their judgment, it may be necessary to do so, in order to protect the title to said property, and may at any time, at their option, commence and maintain suit in any court of competent jurisdiction to obtain the aid and direction of said court in the execution by them of the trusts, or any of them herein expressed or contained, and may in such suit obtain orders or decrees, interlocutory or final, of said court, directing the execution of said trusts, and confirming and approving their acts, or any of them, or any sales or conveyances made by them, and adjudging the validity thereof, and directing that the purchasers of the land and premises sold and conveyed be let into immediate possession thereof, and providing for orders of court or other process, requiring the sheriff of the county in which said lands and premises are situated to place and maintain the said purchasers to quiet and peaceable possession of the

lands and premises so purchased by them, and the whole thereof.

In case default be made in the payment of any sum or [23] sums hereinabove mentioned, the Trustees, their successors or assigns, shall be entitled at any time, at their option, and either by themselves, or by their duly authorized agent, to enter upon and take possession of the above granted premises, or any part thereof, and remove all persons therefrom, and to do and perform such acts of repair or cultivation, as may be necessary or proper to conserve the value thereof, and to collect and receive the rents, issues and profits thereof, and apply the same in the manner hereinbefore specified in respect of proceeds of sale of said premises, and to do such other acts and to exercise such other power in respect to said premises as said trustees may deem necessary or proper to conserve the value thereof, and the expenses therein incurred shall be deemed to be a portion of the expense of this trust, and secured thereby as hereinbefore provided:

The Trustees may at any time, upon request of the parties of the third part, reconvey to the grantors, their heirs or assigns, any portion of said premises without affecting the personal liability of any person, or the payment of any of said indebtedness and without affecting the title to the remaining premises.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the day and year first above written.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the day and year first above written.

MARY C. HILL. (Seal)
MRS. SADIE CASE. (Seal)
CLEVE HILL. (Seal)
JOSEPH HILL. (Seal)
ROBERT ELMER HILL. (Seal)
THOMAS GAY HILL. (Seal)
LAWRENCE HILL. (Seal)
JESSIE I. HILL. (Seal)
JIMMIE O. HILL. (Seal)
FLORENCE HILL DOUGLASS. (Seal)
HUBERT W. HILL. (Seal)
MILDRED L. HILL. (Seal)
CHRISTINE V. DeFOREST. (Seal)
MAUD B. McGREGOR. (Seal)
By MARY C. HILL, (Seal)

Their Attorney-in-fact. [24]

We accept the foregoing trust.

Dated Dec. 20th, 1922.

JOHN M. WALSH, Trustee.
THOMAS A. KEARNEY, Trustee.

State of California,
County of Lassen,—ss.

On this 20th day of December, 1922, personally appeared before me, Geo. N. McDow, a Court Commissioner in and for the said county of Lassen, Mary C. Hill, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that she executed

the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county of Lassen, the day and year in this certificate first above written.

[Seal]

GEO. N. McDOW,
Court Commissioner.

State of California,
County of Lassen,—ss.

On this 20th day of December, 1922, personally appeared before me, Geo. N. McDow, a Court Commissioner in and for the said county of Lassen, Mary C. Hill, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglass, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest and Maud B. McGregor, and who acknowledged to me that she subscribed the names of Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglass, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest and Maud B. McGregor thereto as principals, and her own name as attorney-in-fact, and who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Lassen, the day and year in this certificate first above written.

[Seal]

GEO. N. McDOW,
Court Commissioner.

[Endorsed]: Filed Dec. 17, 1928. [25]

[Title of Court and Cause.]

ANSWER TO PLAINTIFFS' AMENDED
COMPLAINT.

Now come the defendants above named and each and all of them, except the defendants designated by fictitious names, and answering plaintiffs' amended complaint herein filed by leave of the Court on December 17, 1928, suggest and allege:

(a) That said amended complaint fails to state facts sufficient to constitute a cause of action in equity, or any cause of action, against the said defendants, or either or any of them.

(b) That said amended complaint wholly fails to state facts sufficient to constitute a cause of action for the subrogation of the plaintiffs, or either of them, to the alleged liens of the said Richard Kirman and Walter J. Harris, and/or the said Georgiana F. Lonkey; and that said amended complaint states no facts sufficient to support, or upon which to base, a finding or judgment that the [26] said plaintiffs are entitled to be subrogated to the

said alleged liens of the said Richard Kirman and Walter J. Harris and/or the said Georgiana F. Lonkey.

(c) That the said amended complaint wholly fails to state facts sufficient to constitute a cause of action against the defendant, Mary C. Hill, as administratrix of the estate of Thomas Hill, deceased; and does not state facts sufficient to support a finding or decree adjudging that the said Thomas Hill and his estate are estopped from denying the delivery of the said deed, Exhibit "A," and/or the title of the said Mary C. Hill, and/or the validity of the said deed of trust, Exhibit "B."

(d) That said amended complaint does not state facts sufficient to constitute a cause of action for a decree quieting the plaintiffs' title to the lands described therein.

And said defendants, for answer to the specific allegations of the said amended complaint admit, deny and allege as follows, to wit:

I.

Admit the allegations of paragraphs I to VI, inclusive, of the said amended complaint.

II.

Admit that on the 15th day of December, 1917, the said Thomas Hill executed a deed conveying the said property to his wife, Mary C. Hill, and delivered the said instrument to one Grover C. Julian with instructions to hold the same until the death of the said Thomas Hill and then hand the same to the said Mary C. Hill; but deny that the said

deed was, on the said 15th day of December, 1917, or at any other time prior to the death of said Thomas Hill, duly delivered to the said Mary C. Hill in the manner alleged, or otherwise, and/or with the intent and purpose, or intent or purpose, that title to the said property should vest in the said Mary C. [27] Hill, subject to a life estate in the said Thomas Hill.

In this connection defendants allege that the said deed to his wife, Mary C. Hill, was executed by said Thomas Hill and left in the possession of one Grover C. Julian to be delivered after his death, with the intent and purpose that title to the said property should remain in said Thomas Hill until his death and vest in the said Mary C. Hill only upon his death and the delivery to her of the said deed. That, after the execution of said deed, and at all times until the death of said Thomas Hill on July 22, 1922, the said Thomas Hill remained in possession of said property and operated the same and claimed to be the owner thereof and to be vested with title thereto.

III.

Admit that the plaintiffs, W. M. Kearney and Patrick Walsh, loaned to said Mary C. Hill the sum of Fifty Thousand (\$50,000) Dollars, evidenced by two promissory notes and secured by a certain trust deed, as alleged in paragraphs VIII, IX and X of said amended complaint; and in this connection allege that said promissory notes and said trust deed were executed by the children of said Mary C. Hill at the direction and request of

the plaintiff, W. M. Kearney. That the said defendants, the children of Mary C. Hill, who signed said promissory note, are heirs at law of said Thomas Hill; and defendants are informed and believe, and on such information and belief allege, that at the time said loan was made to Mary C. Hill, the plaintiffs, W. M. Kearney and Patrick Walsh, had full knowledge and information as to the fact of the death of Thomas Hill and that the said deed from Thomas Hill to Mary C. Hill, his wife, was not delivered until after the death of Thomas Hill; and that the said children of Mary C. Hill, and heirs at law of said Thomas Hill, were requested and required by said W. M. Kearney to sign said promissory notes and trust deed for the reason that he, [28] the said W. M. Kearney, then knew and was fully informed that the said defendants, and each of them, were heirs at law of said Thomas Hill, and then had a vested interest in the said real property.

That the defendant, Mary C. Hill, the widow of Thomas Hill, deceased, delayed the commencement of any proceedings to probate the estate of Thomas Hill, deceased, until about the month of May, 1923, and in failing to probate the said estate prior to the execution of the said promissory notes and trust deed, acted upon the advice of the plaintiff, W. M. Kearney, who is an attorney at law, and who advised her in all matters pertaining to the execution of said promissory notes and trust deed; and that she relied upon his advice and direction and did not at that time, nor until after the com-

pletion of said loan, seek independent legal advice with reference to the necessity of commencing proceedings to probate the estate of Thomas Hill, deceased.

IV.

Admit the allegations of paragraph XI of said amended complaint.

V.

As to paragraph XII, deny that said plaintiffs so loaned and advanced the said money for the express purpose of paying and discharging said liens, except that, at the direction of said Mary C. Hill, such portion only of said money included in said loan as was necessary to secure the discharge of said liens alleged in paragraph XI, was to be and was applied for that purpose.

That from said \$50,000 loan, the sum of \$32,050, and no more, was paid to the said Richard Kirman and Walter J. Harris, in satisfaction of their indebtedness and the lien against said property, and the further sum of \$10,000, and no more, was paid therefrom to the said Georgiana F. Lonkey, or to her use and benefit, as a consideration for the satisfaction of and release of her said lien against said property. [29]

That upon the payment of said sums of money as aforesaid, and on or about the 24th day of December, 1922, the said liens upon the said property alleged in paragraph XI of said amended complaint, were fully discharged and released of record, and the same have never been questioned or revived. That no assignment or transfer of said liens to the

plaintiffs, or any other person, has ever been made by said lien claimants.

VI.

As to the allegations of paragraph XIII of said amended complaint, defendants have no knowledge, information or belief sufficient upon which to answer the same, and basing their denial upon that ground, deny each and all of the allegations thereof; and allege that at the time the said plaintiffs so loaned said money to said Mary C. Hill, they had full knowledge and information as to the record title to said property and that the title thereof stood of record in the name of Mary C. Hill, subject to administration in the probate courts of the State of California, to payment of creditors' claims and distribution by decree of the probate court to the heirs of Thomas Hill, deceased, or their successors in interest.

VII.

Admit that on the 25th day of May, 1923, Mary C. Hill was appointed administratrix of the estate of Thomas Hill, deceased; and in this connection allege that it was legally necessary that an administration of said estate be had for the settlement and payment of inheritance tax liens against said property, and for the adjudication and payment of claims against the estate of Thomas Hill, deceased; that immediately after her appointment as such administratrix, said Mary C. Hill, pursuant to the provisions of the Code of Civil Procedure of the State of California, duly published Notice to Creditors of said Thomas Hill, deceased, as required by

law, and thereafter and within the time prescribed by law, numerous claims [30] against the said decedent were filed by creditors and approved and allowed as approved by law. That the aggregate amount of such claims so filed, approved and alleged, was the sum of \$48,391.88. That the assets of said estate, exclusive of the real property described in plaintiffs' complaint, were and are insufficient to pay the said claims in full, and the costs, charges, and expenses of administration.

Admit that defendants claim that the said Thomas Hill was the owner of the said land at the time of his death, but deny that they have threatened to convey the said land as the property of the said Thomas Hill, or otherwise, except that the defendant, Mary C. Hill, as administratrix of the estate of Thomas Hill, deceased, did, by published notice of sale in said probate proceedings, on or about the 10th day of September, 1925, offer for sale all the right, title and interest of said Thomas Hill, deceased, in and to all the real property belonging to said estate.

Deny that the claims of defendants made by them of the said property as the property of said Thomas Hill and/or his estate will create a cloud upon any title thereto claimed or acquired by plaintiffs; and allege that said lands and any title thereto acquired by plaintiffs, by or through or under said trust deed, has at all times been, and still is subject to administration in the probate court, and the payment of the creditors of said Thomas Hill and expenses of administration.

IX.

As to the allegations of paragraph XV of said amended complaint, defendants deny that said Thomas Hill and/or his estate, and/or the defendant, Mary C. Hill, as administratrix of the estate of Thomas Hill, deceased, are estopped from denying and/or disputing the due delivery of the said deed from said Thomas Hill to Mary C. Hill; admit the execution and delivery of said deed to one Grover [31] C. Julian, but deny that the said Thomas Hill and/or the said Mary C. Hill thereby placed the said instrument in such a position that the same would, in the natural order of events, be recorded and become a public record; deny that the said complainants relied upon the said instrument and/or record thereof, and deny that they believed that the same had been duly delivered, and deny that they had no knowledge or information to the contrary; and deny that they advanced said money on the faith of said instrument; and deny that, at the time of so loaning said money, the said defendants had no knowledge, notice or information in any way disparaging the apparent title of said Mary C. Hill to the said land; and deny that they advanced the said money in good faith, or otherwise, in reliance upon said title.

On the contrary, defendants allege that the complainants, upon the making of said loan, had full knowledge and information as to the apparent title and interest of all the defendants in said land as the heirs at law of said Thomas Hill, and that they made said loan and advanced said money in reliance

upon the title and interest in said property of all of these defendants, and not upon the title and claims of said Mary C. Hill alone.

X.

Defendants deny that no part of the interest due upon said promissory notes has ever been paid, and in this connection allege that all interest due on said two promissory notes was by the defendants fully paid to the first day of February, 1924.

XI.

Deny that the said John M. Walsh and Thomas A. Kearney, as trustees under the said deed of trust, sold all of the said property in accordance with the provisions of the said deed of trust, and in this connection defendants allege:

That subsequent to the filing of defendants' original [32] answer herein, to wit, on or about the 14th day of June, 1926, the plaintiff, Thomas A. Kearney, claiming to act as trustee under authority of the deed of trust mentioned and set out in plaintiffs' bill of complaint herein attempted and pretended to sell the lands and premises covered by said deed of trust. That at said attempted and pretended sale the defendant, John M. Walsh, who was then alive and under no disability, and who was cotrustee with said Thomas A. Kearney, under said deed of trust, was not present and did not participate in said pretended sale.

Deny that, pursuant to said sale and the deed executed by said trustees as alleged in paragraph XVII of said amended complaint, the said Patrick

Walsh & Sons, Incorporated, a corporation, ever since has been, and now is the owner thereof, and/or that all adverse claims of the defendants thereto are without right.

XII.

Deny that the complainants have no plain, speedy and/or adequate remedy in the ordinary course of law.

For a further and separate answer and defense to plaintiff's alleged cause of action and claim to the right to be subrogated to the rights and liens of said Richard Kirman and Walter J. Harris, and the right and lien of said Georgiana F. Lonkey, the defendants allege:

That the said claim of and cause of action for the subrogation of plaintiffs to the rights and liens of said Richard Kirman and Walter J. Harris and said Georgiana F. Lonkey, is barred by the provisions of Section 337 of the Code of Civil Procedure of the State of California. [33]

WHEREFORE, defendants pray:

1. That plaintiffs take nothing upon their claim and cause of action to quiet the title of plaintiffs to the said property.

2. That the claim of the right of subrogation of plaintiffs to the liens of the said Richard Kirman and Walter J. Harris and the said Georgiana F. Lonkey be denied.

3. That it be adjudged that the said Thomas Hill and his estate are not estopped from denying the delivery of said deed.

4. That any sale of said property under the decree or order of this court be made for the purpose of first paying the creditors of the estate of Thomas Hill and the expenses of administration before the same is applied to the payment of plaintiffs' claims; and

5. That the defendants recover their costs of suit herein.

J. E. PARDEE,
R. M. RANKIN,
Solicitors for Defendants. [34]

State of California,
County of Lassen,—ss.

J. E. Pardee, being first duly sworn, says:

That on January 9, 1929, affiant mailed to Edward F. Treadwell, Esq., one of the solicitors for the plaintiffs above named, a true copy of the foregoing answer to plaintiffs' amended complaint, addressed to said Treadwell at his office in the Standard Oil Building, San Francisco, California; and that the same was mailed in the U. S. postoffice at Susanville, California, and that the postage thereon was fully prepaid.

[Seal]

J. E. PARDEE.

Subscribed and sworn to before me this 9th day of January, 1929.

J. A. PARDEE,
Notary Public.

[Endorsed]: Filed Jan. 10, 1929. [35]

[Title of Court and Cause.]

Before KERRIGAN, District Judge.

October 18, 1928.

MEMORANDUM OPINION.

On examination of the record in this case, I reach the following conclusions:

1. There was no delivery of the deed from Thomas Hill to his wife, Mary C. Hill during the lifetime of the grantor.

2. Plaintiffs are not entitled to quiet title as against Mary C. Hill, as administratrix of the Estate of Thomas Hill.

3. Plaintiffs are entitled to a decree quieting title as against Mary C. Hill, individually, and against the other heirs of Thomas Hill joining in the trust deed out of which plaintiffs' claim arises.

4. Plaintiffs are further entitled to a decree against Mary C. Hill, individually, and the heirs above mentioned for the deficiency judgment sued for, in the sum of \$5,000, with interest from June 14, 1926.

It appears from the evidence herein that various claims allowed by the probate court against the Estate of Thomas Hill remain unpaid. It appears probable that there will be necessary a probate sale of this property to satisfy these claims. In order to protect the rights of all parties to the present suit, the decree to be drawn should contain a provision that in the event of a probate sale of the property,

or upon final distribution, the parties may come in at the foot of the [36] decree for a final determination and adjustment of their interests as they then appear.

Costs to Mary C. Hill, as administratrix of the Estate of Thomas Hill. The other parties to bear their own costs.

So ordered.

KERRIGAN,
District Judge.

(Not to be reported.)

[Endorsed]: Filed Oct. 18, 1928. [37]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 17th day of December, in the year of our Lord one thousand nine hundred and twenty-eight. Present: the Honorable FRANK H. KERRIGAN, District Judge.

[Title of Cause.]

MINUTES OF COURT—DECEMBER 17, 1928—
ORDER GRANTING MOTIONS, ETC.

After hearing attorneys for the respective parties, IT IS ORDERED that the motion to set aside submission, motion for leave to file amended complaint, on the calendar this day in the above-entitled

case, be and the same are hereby granted, with leave to answer said amended complaint within fifteen days. [38]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 6th day of May, in the year of our Lord one thousand nine hundred and twenty-nine. Present: the Honorable FRANK H. KERRIGAN, District Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 6, 1929—TRIAL.

These cases came on this day for trial before Judge Kerrigan; W. G. Treadwell, Esq., appearing as attorney for plaintiff and defendant Walsh, et al., and J. E. Pardee and R. M. Rankin appearing as attorneys for plaintiff, Bank of Lassen, and defendant, Hill. After hearing Mr. Treadwell and no objection being made thereto, it was ordered that the two cases be consolidated for trial. Mr. Treadwell, on behalf of the plaintiff and defendant, Walsh introduced in evidence and filed the depositions of Seymour Case, Grover C. Julian and Miss Alcesta Lowe, and W. M. Kearney was sworn and testified in behalf of the plaintiffs, and plaintiffs rested. Attorneys for the respective parties, plaintiffs and defendant, Bank of Lassen called C. A.

Bridges and J. E. Pardee, who were sworn and testified, and plaintiffs and defendant introduced in evidence and filed their exhibits marked:

Defendants' Exhibit "B"—Note.

Defendants' Exhibit "C"—Mortgage.

Defendants' Exhibit "D"—Deposit Slip.

Defendants' Exhibit "E"—Bill of Sale.

Defendants' Exhibit "F"—Deed.

Defendants' Exhibit "G"—Reconveyance.

Defendants' Exhibit "H"—Release.

Defendants' Exhibit "I"—Affidavit of Publication.

Defendants' Exhibit "J"—Articles of Incorporation. [39]

and introduced in evidence and filed the deposition of Mary C. Hill, and rested. After hearing attorneys it was ordered that the case stand submitted, on briefs filed and to be filed in 15 and 5 days. [40]

[Title of Court and Cause—Cause Nos. 198—Eq.,
208—Eq.] [41]

CONDENSED STATEMENT OF TESTIMONY AND EVIDENCE.

(In this statement the plaintiffs in case No. 198 and the defendants in case No. 208 will be referred to as the plaintiffs, and the defendants in case No. 198 and the plaintiffs in case No. 208 will be referred to as the defendants.)

Plaintiffs offered in evidence a certified copy of the deed dated December 15, 1917, by Thomas Hill to Mary C. Hill, recorded August 8, 1922, in Book 9 of Deeds, page 266, and the same was admitted in evidence and marked Plaintiffs' Exhibit 1, and is in all respects in accordance with Plaintiffs' Exhibit 1 attached to plaintiffs' complaint in case No. 198 and Defendants' Exhibit 2 attached to defendants' answer in case No. 208.

TESTIMONY OF GROVER C. JULIAN, FOR PLAINTIFFS.

I live in Susanville, California, and am an attorney at law, and have practiced law for twenty years. In 1917 I was residing and practicing law at Susanville, California. I knew Thomas Hill in his lifetime. Previous to that time I had acted as his attorney in various matters. I remember Mr. Hill coming into the office about the date of the deed dated December 15, 1917. I do not recall the exact date. Mary C. Hill, his wife, was with him. Mr. Hill handed me a deed and stated that it was a deed to the Willow Creek Ranch to Mrs. Hill; that I was to take that deed and hold it and keep it in my safe and hand it to Mrs. Hill on his death, to be then recorded. The deed was taken by me and placed in my *wafe* and kept until after the death of Thomas Hill. I do not remember all the conversation. It was not very extensive, but I do remember that Mr. Hill stated the nature of the deed and told me that I was to hold that deed, keep it in my possession and

(Testimony of Grover C. Julian.)

in my safe until his death, and then to hand it to Mrs. Hill for [42] recording. Mrs. Hill was present during all of the conversation. They came in together and went out together and were together in my private office during all of the conversation. He attached absolutely no conditions to the delivery of the deed to me. There was nothing said about any reservations whatever. There was nothing said as to his right to recall it. Some short time after the death of Mr. Hill, Cleve Hill, a son, came into the office, and said that his mother wanted the deed to the ranch property, and I delivered the deed to Cleveland Hill at that time. I have never seen the deed from that time to the present. I saw Mr. Hill at different times after that occasion and before he died. I saw him every once in a while in Susanville from that time until the time of his death. I never had any conversaton with him relative to the deed. He never said anything further about the deed. He never demanded the return of the deed. The deed was never mentioned by Mr. Hill to me. I am satisfied that this is the same deed that was in my possession and delivered to me by Mr. Hill and delivered by me to Cleveland Hill. When he gave the deed to me in the office that day I took one of my envelopes, a large envelope, and made a notation on the outside of the content of the envelope, that it was a deed from Thomas Hill to Mary C. Hill, for delivery on the death of Thomas Hill. The deed remained in the envelope until it was taken out of the envelope for handing to Cleve Hill. There were

(Testimony of Grover C. Julian.)

not any revenue stamps on it when I received it that I recall. No mention was made of revenue stamps. I did not ask Mr. Hill any questions. I have related all that occurred so far as I can recall. There might have been some additional talk there, but I think that I have given all of the substance of the conversation so far as I can remember it. I do not know when the stamps were put on. I have no information as to [43] that.

Cross-examination.

It was about the time of the execution of the deed that Mr. Hill and his wife came into my office. I don't remember whether it was the same date. It was immediately after the date the deed bears. I did not prepare the deed, myself. The deed was not prepared by me. It is my recollection that Mr. Hill brought this deed to me shortly after the date it bears, and the deed had just been executed, or signed and acknowledged prior to its delivery to me. Mrs. Hill came with him to my office at that time. I never had any conversation with Mr. Hill regarding the deed either in the presence of his wife, or otherwise, outside of the conversation when he handed me the deed. I don't recall the revenue stamps being on the deed and my impression is that they were not. I could not say how long after Mr. Hill's death I delivered that deed to Cleve Hill. I have no memorandum of the date; it was some little time after his death. My impression is it was possibly two or three weeks I could not say. I was

(Testimony of Grover C. Julian.)

still in Susanville when Mr. Hill died. After Mr. Hill died I did not communicate the fact to Mrs. Hill that I had the deed for her. Mrs. Hill did not communicate with me in any manner with reference to the deed prior to the time that Cleve Hill called for it. I did not become aware and was not informed that Mrs. Hill was looking for papers of that kind after Mr. Hill died. There was nothing ever said to me about it. The first communication I had from any of the Hills was when Cleve called for the deed. Of course, I knew all the time that the paper was in my office. I did not communicate with Mrs. Hill. I might say that I had done various business for Mr. Hill previous to that, and other attorneys had also done business for Mr. Hill. In connection with the settlement of his estate I did not know [44] who would be called on to do that, and I just waited until someone should say something to me about it. Between the date of the deed and the date of the death of Mr. Hill I did no business for Mr. Hill that I can recall. There was a matter of unfinished business, but it was inactive. There was also one matter that I do recall, and that was, we might say, inactive. I knew generally that Mr. Hill was in possession of the Willow Creek Ranch, was farming it, or was taking care of it, the same as he had in the past; at least, that was my understanding of the matter. The Willow Creek Ranch is the property described in the deed. [45]

TESTIMONY OF WILLIAM M. KEARNEY,
FOR PLAINTIFFS.

I reside in Reno, Nevada, and am an attorney at law. Have been practicing about eleven years. I am one of the plaintiffs named in this action, one of the beneficiaries. I am acquainted with Mary C. Hill. I am acquainted with Patrick Walsh and was acquainted with John M. Walsh and Thomas A. Kearney during their lifetime. The loan represented by the trust deed was negotiated through me by Cleveland Hill, the elder son of Mary C. Hill, and Seymour Case, a son-in-law of Mrs. Hill, who is married to Mrs. Hill's eldest daughter. The Hills made a statement to me of the property out there before they made the loan. Prior to the time I made the main loan I received a letter from Mary C. Hill relative to the loan. I had advanced the sum of \$8,000 to meet some emergency payments. Subsequently this letter was received, and before the main loan was made. It is in the handwriting of Seymour Case accompanying the letter you just handed me, dated October 18, 1922. That letter, I believe, is signed by Mary C. Hill, by Seymour Case, and by Cleveland Hill. The three signatures are on the letter. Mrs. Hill told me that this was her statement and that she authorized it.

(The letter and statement were thereupon admitted in evidence, marked Plaintiffs' Exhibit 2, and are as follows:)

PLAINTIFFS' EXHIBIT No. 2.

“Hills Meat Market,

Susanville, Cal. Oct. 19th, 1922.

Mr. W. M. Kearney,
Attorney at Law,
Reno, Nev.

My dear Kearney:

After considering your letter relative to the matter of a loan from Mr. Walsh will advise that we are still desirous of making the loan, but do not believe we should offer as permanent security any property or equities that are part of Mr. Hill's Estate. There would then remain the Willow Creek ranch with machinery, horses and all personal property connected with it. It would be difficult to include [46] any cattle as all of last years and this years calves have been branded with the Lonkey brand and there remain but a few on the ranch that carry the original, or Folsom, brand. There are now a considerable number of cattle in excess of the number acquired from Mrs. Lonkey, but as stated nearly all of them carry the Lonkey brand and Mrs. Lonkey will not consent to another mortgage being placed on any of the cattle if she is to release the second mortgage on the ranch and take a chattel mortgage on all cattle in lieu, as we have arranged for. Thus the security we could offer under a clear first mortgage would be the Willow Creek ranch with all improvements, appurtenances and personal property except cattle.

As Mr. Walsh has already been over the place he knows fairly well what is on it in the way of equipment so we need not undertake to describe it in detail here. We trust that he will see fit to make the loan on the security that can be given, and are gratified to know that he has faith in our ability and integrity as expressed in your letter.

Sorgi has not yet arrived so it seems very doubtful whether he will come out at all.

Awaiting your reply as to whether or not the loan will be made, we are

Very sincerely,
MARY C. HILL.
CLEVELAND HILL.
SEYMOUR CASE.

Financial Statement

Mary C. Hill and Thomas Hill Estate.

Sept. 25th, 1922.

Willow Creek Ranch owned by Mary C. Hill—area approx. 3300 acres, of which about 2000 acres is 1st class wild hay meadow, about 400 acres of grain land and remainder is pasture land most un-cleared.

The water supply for this ranch is from Willow Creek which has its source in numerous springs which furnish nearly a constant flow throughout the year except during the spring run-off. During the period of normal flow about 1,500 miners inches of water under a 4-inch pressure is available for the ranch and during the spring run-off a much larger flow varying with the season.

A conservative estimate of the value of the ranch including all stock and improvements *if*.....\$220,000.00

Obligations consist of:

First mortgage on Trust Deed held by the Farmers and Merchants Bank of Reno to secure two notes..... 30,000.00

Second mortgage to Georgiana F. Lonkey of Susanville, Cal. as security for cattle 27,200.00

Third mortgage held by W. M. Kearney of Reno as security for a note of... 8,000.00

(Have been assured that on the payment of \$10,000 second mortgage will be released and chattel mortgage taken on cattle in lieu.)

Other property of Mary C. Hill consists of:

Real estate and improvements in Susanville, Cal.\$10,000.00

Stock in Hill Land & Livestock Co..... 5,000.00

No indebtedness. [47]

Estate of Thomas Hill consists of:

Equity in Lonkey Ranch, Willow Creek Valley\$12,000

Stock in Hill Land & Livestock Co. (including stock of a deceased son, est. not yet probated) 10,000

Hill's Meat Market in Susanville, value of equipment 8,000

Stock in Lassen Grain & Milling Co. of Susanville 2,000

(Testimony of William M. Kearney.)

Miscellaneous (consisting of several isolated tracts of land, and good accounts payable)	6,000
	<hr/>
	\$38,000

Indebtedness.

Unsecured notes and all other outstanding obligations, approximately	\$15,000
--	----------

Revenues for past year.

Net revenue of Meat Market not including wages to sons.....	6,000
---	-------

(Will exceed that amt. this year due to increase of business.)

Net revenue of Willow Creek and Lonkey ranches not including wages of sons, approx.	15,000
--	--------

(Revenue was mostly from pasture of outside stock. It could be doubled at least if the ranches were properly stocked.)

No net revenue from Hill Land & Livestock Company. Land most unimproved.)”

I had that letter and statement before I finally made the loan. This is the trust deed given to Mr. Walsh and myself, dated December 20, 1922, representing a \$50,000 loan. The two notes are set forth in the trust deed, one for \$8,000 and one for \$42,000.

(Said trust deed was thereupon admitted in evidence and marked Plaintiffs’ Exhibit 3, and is in all particulars as alleged in the complaint in case No. 198 and in the answer in case No. 208.) [48]

At the time of making that loan I had an abstract of title on the Willow Creek ranch and the land de-

(Testimony of William M. Kearney.)

scribed. I know about the indebtedness of the Farmers & Merchants Bank. There was a \$30,000 indebtedness represented by a trust deed given by Mary C. Hill and Thomas Hill dated in 1917. The interest had not been paid for some time. That indebtedness of \$30,000 was taken up at the time this loan was made, the transaction was carried on simultaneously. In other words, the \$30,000 plus the interest, which in round numbers was \$2000, was paid to the Farmers & Merchants Bank, and simultaneously therewith they reconveyed to Mary C. Hill all of the property known as the Willow Creek ranch, and specified in the trust deed. They conveyed that direct to her. This indebtedness to the Farmers & Merchants Bank of \$32,000 was paid out of the \$50,000. It was turned over by certified check which I had and which had passed in the transaction from Mary Hill to the Farmers & Merchants National Bank. And then the Farmers & Merchants National Bank made a reconveyance of the property in their trust deed direct to Mary C. Hill. Before the loan was concluded it had been arranged with Mrs. Lonkey by Mr. J. E. Pardee, and Cleveland Hill, and Seymour Case, that Mrs. Lonkey would release the \$27,200 mortgage under a contract which was in escrow, or to be escrowed with the Lassen County Bank of Susanville, California. \$10,000 was to be deposited with the Lassen County Bank of California, and upon the deposit of that \$10,000 over and above the \$32,000, I would be furnished with a release of the second mortgage by Mrs. Georgiana Lonkey. I deposited

(Testimony of William M. Kearney.)

the \$10,000 with the Lassen County Bank, in accordance with a previous understanding and negotiation with Mr. Bridges, the cashier of that bank, who, in my presence, had called up Mr. Pardee, who was representing Mrs. Lonkey. I returned to Reno the following day, I [49] believe, and received this letter from Mr. Bridges concerning the transaction—a telegram and a letter confirming it.

(Said telegram and letter were admitted in evidence, marked Plaintiffs' Exhibit 4, and were as follows:)

PLAINTIFFS' EXHIBIT No. 4.

“Susanville, Calif., 953 A. Dec. 21, 1922.

W. M. Kearney,

Gazette Bldg., Reno, Nev.

Have in our possession release of mortgage on Hill ranch executed by Georgiana F. Lonkey. Forwarding copy by mail to-day.

BANK OF LASSEN COUNTY.

Susanville, California, December 21, 1922.

W. M. Kearney,

Gazette Building,

Reno, Nevada.

My dear Mr. Kearney:

We are inclosing a copy of a telegram sent you today. In accordance with our promise, we are inclosing a copy of the Release of Mortgage executed by Georgiana F. Lonkey, the original being held in this office subject to a deposit of \$10,000.00 to be made with us.

(Testimony of William M. Kearney.)

If you will send us a check for that amount, we shall be pleased to file the Release for record and forward the same to you when returned to us by the County Recorder.

Trusting we have handled this transaction according to your wishes, we are

Very truly yours,

C. H. BRIDGES, Cashier."

The \$10,000 was immediately deposited at the request of Mary C. Hill with the Bank of Lassen County, and the \$27,000 mortgage was released. That makes \$42,000 of the \$50,000. Mr. Case, an old acquaintance of mine had come to Reno and stated that he was representing his mother-in-law, Mrs. Hill, and that the interest on the Lonkey mortgage was overdue, and there were some other pressing bills to pay, such as taxes coming on, and they needed some money immediately. The amount that he specified was \$8,000. [50] I got that together. It was with the intention of getting for them the \$50,000 loan as a whole. That much was advanced on the 24th or the 26th of September, 1922, I have forgotten the exact date. A note and a third mortgage were prepared and signed by Mary C. Hill, covering that \$8,000. Then that was merged in the final trust deed which was given. I was advised by Mrs. Hill that there was a \$2500 payment on the Lonkey mortgage; then there was interest. The money was turned over for that purpose, and on that representation, and Mrs. Hill told me what she had done with it. And Mr. Case also. Mr. Case was doing most of the business for Mrs.

(Testimony of William M. Kearney.)

Hill. \$2,500 to Mrs. Lonkey. \$3,300 interest to her. Then there was \$1,050 paid on back interest to the Farmers & Merchants Bank. Then there was some litigation on the ranch—Mr. Williamson, of San Francisco, was representing them in a condemnation suit, where the Tule Irrigation District was condemning a right of way across the land, and Mr. Williamson was paid \$500. That totals \$8,050. I am just stating what they advised me as to the payments. This is a copy of a statement made by Mrs. Hill which she filed in the court at Susanville in the matter of the Estate of Thomas Hill, deceased. The indebtedness of \$50,000 drew 8 per cent interest. The first installment was paid in June, 1923. The next installment was defaulted. A check for \$1500 was sent to me, and the check returned unpaid. Subsequently a check of \$750 was sent to take up the \$1,500 check. Without the account, I would say that that is all the interest that was paid. There was no interest paid after February, 1924. It ran through 1923. It was paid up to February, 1924, and I think that was all the interest that was paid. No interest after that. They paid the taxes a portion of the time, and then we were obliged to pay the taxes. The taxes, expenses and incidentals paid out [51] amounted to \$1,531.91. I have not got that segregated. The principal and interest amounted to \$60,339.29 on the date of the sale under the trust deed on June 14, 1926, making a total of \$61,871.20, which was the actual interest and outlay, aside from any trustees'

(Testimony of William M. Kearney.)

charges, or the provision in the trust deed of 5 per cent for default. The sum that was due on the date of the sale was \$61,871.20. This is a default, recorded in the records of Lassen County, pursuant to the California statute requiring a default certificate under a trust deed. It was executed by Trustees Patrick Walsh and W. M. Kearney. It was recorded on the 18th of November, 1925.

(Said document was admitted in evidence, marked Plaintiffs' Exhibit 5, and was in accordance with the allegations of the complaint in case No. 198 and of the answer in case No. 208.)

From the second default in interest down to the time the property was actually sold, we had consistently told them that we did not want the property, that if they could sell it and get the money that is all that Mr. Walsh desired, or myself, for the \$8,000 interest that I had advanced. They made a number of attempts to sell it. I tried to aid them in selling the property. The property was offered for a period of two years but without any success at all in making a sale. I think every avenue had been exhausted in attempting to make a sale of the property, or to make a new loan on the property and refund the old loan. I had probably half a dozen or more letters on the question of refunding the loan, or selling the property. This is a deed made by the trustees John M. Walsh and Thomas A. Kearney immediately following the sale of the property on June 14, 1926. The deed is dated June 21st, just about a week later. That is the trustees' deed to Patrick Walsh & Sons, Inc.

(Testimony of William M. Kearney.)

(Said deed was thereupon submitted and read in evidence, [52] marked Plaintiffs' Exhibit 6. Said deed was in accordance with the allegations of the complaint in case No. 198 and of the answer in case No. 208 and recited that in consideration of a receipt from William M. Kearney and Patrick Walsh for the sum of \$61,871.20 the property was conveyed to the purchaser, Patrick Walsh & Sons, Incorporated.)

At the time I took this trust deed there was an abstract of title prepared. It was not extended, but it had been prepared showing title up to December 20th, I believe the date the trust deed is. In that abstract this deed from Thomas Hill to Mary C. Hill was contained. The deed was recorded in August, 1922. When the \$8,000 advance was made, I did not have any knowledge the way that deed had been made and delivered. Subsequent to that time and at the time that the bank reconveyed the property to Mary C. Hill, it was disclosed that the deed had been given to Mary C. Hill, placed in Mr. Julian's custody and delivered in 1917, the date of the execution of the deed, and Mary Hill, from that time, claimed the property. She, herself, stated that the property was hers, and that it was intended that she should have that property, as well as her home property—the house in which she lived at Susanville. That statement was made to me at her home on the 20th of December, 1922. I visited her home the day the trust deed had been executed. It had not yet been delivered. The trust deed was executed on the 20th day of Decem-

(Testimony of William M. Kearney.)

ber, at her home, and the final conclusion of the papers took place on the 29th day of December, 1922. At the time the \$50,000 was loaned there was no contention that it was not her property. Every representation was made both by Mr. Case, Cleveland Hill and by Mrs. Hill that the property was hers, and she had been dealing with it and had negotiated a right of way with two irrigation districts there, and [53] they had dealt with her in that connection, and she had given them a deed to a right of way across the property, and had accepted the money. Mr. Pardee was representing the irrigation districts and dealt with her as the owner of the property. The first information that I had of any claim being made by the estate was in a letter from Hubert Hill some time later, in which he said the Lassen County Bank, which had two notes, I believe, for about \$8,000 was behind a move to question the trust deed that we held. That was after the mortgage had been made and the money advanced. That must have been in the latter part of 1923. The letter is undated, but this might fix the time. Mr. Hill had sent me a check for his mother for \$1500 on account of interest. Between the time the check had been mailed and the time that it was returned to the Lassen County Bank to be paid the Lassen County Bank had apparently taken the money for themselves to pay on their \$8,000 open account that they had. I think the letter states. If it does not that is what Hubert Hill told me. Up to the time he advanced the money and took

(Testimony of William M. Kearney.)

the trust deed we had no knowledge that on the part of anyone there was any such claim. We had advanced the \$50,000 in actual cash, and in reliance upon the abstract showing.

Cross-examination.

I received the statement (Plaintiffs' **Exhibit 2**) shortly after its date. It is dated October 19, 1922. The \$8,000 had been advanced prior to that time. From that statement I did not learn that the estate of Thomas Hill was interested in the property. This statement is separate; one page is Mary C. Hill's property and the other page is the property of the estate. I rather think that I knew that there had been no administration on the estate of Thomas Hill. I would not say positively. I was not [54] interested in that. I know there was no probate proceeding pending. I asked Mrs. Hill, on December 20th, when the trust deed was signed, concerning the delivery of the deed, and I made the inquiry there, and also learned, as I stated, that she had been dealing with the property with the irrigation districts. Up to that time that was all. Mr. Julian was not available at that time. He had left Susanville, and I did not know his address. I rather think that is as far as I went with any information as to whether the estate was interested. Mr. Case came to me in the first place probably as a friend. I had known him for some time. I had gone to college with him. He wanted to know if I could help them out in securing a loan. A Mr. Sorgi, of

(Testimony of William M. Kearney.)

Reno, was approached for it. For a time he indicated that he might lend the money. He did not have sufficient available money. Then I got in touch with Mr. Walsh for them. I don't know whether I represented the lenders or the borrowers in this transaction, or whether I represented them both. I have stated the facts. I don't know. It was just one of those things that comes up. I felt very kindly toward the Hills. Mr. Hill gave me \$500, as he said, as a bonus for making the loan. Mr. Case paid it to me. I knew both parties. I don't think there was ever anything said about who I represented. Mr. Walsh did not show up until the money was turned over, except once when he examined the ranch, in October, I believe. The transaction was concluded on the 20th day of December, 1922. I appeared at Mrs. Hill's home and she signed the papers. The papers were not actually delivered, I think, until the 29th, because of defects, I have forgotten just what it was now, but they were held up for a week or ten days. Up to that time I had made no further examination as to matters affecting the title to the property, other than I have stated, inquiries from Mrs. Hill and Mr. Case [55] and Cleveland Hill. Mrs. Hill told me that that deed had been given to Mr. Julian in her presence, as Mr. Julian has already testified. At that time I did not in detail make any inquiry or investigation as to who had been in possession of and had been operating the property from the date of the deed in December, 1917, to the date of

(Testimony of William M. Kearney.)

Mr. Hill's death. I just took it for granted that Tom Hill was there. He and his wife were living on the property for some time. The reason the trust deed is executed not alone by Mary C. Hill, but by the children of Mary C. Hill was I think, primarily, when the trust deed was reconveyed by the bank, they wanted a power of attorney from the children to reconvey it to her, so the whole transaction was carried on by Mary C. Hill and Mary C. Hill as attorney-in-fact for her children.

“Q. You treated with the children, then, as heirs-at-law of Thomas Hill, did you not?”

“A. That was just as a matter of precaution. The bank, when they made a reconveyance to her, wanted that.

“Q. And from your knowledge of the property, and the title to the property, you required the heirs of Thomas Hill all to sign that trust deed?”

“A. They did sign it.”

Redirect Examination.

Walsh and the other trustees had no notice of how this deed from Hill to his wife had been delivered. They left it to me. Nothing was said about it. Mr. Walsh did not come in until I think it was the 17th or 18th of December, 1922. He gathered up the money to make up the \$42,000. The \$500 that was paid to me I regarded more as just a bonus from Mr. Case, he appreciated the fact that I had helped them out of an immediate desperate situation. Mrs. Lonkey was after them for her

(Testimony of William M. Kearney.)

money, and they had no ready cash. And the Farmers & Merchants Bank's interest on the \$30,000 trust deed was due; taxes were coming on. He just simply said, "We are going to give you the \$500 for your efforts." [56] The \$500 was to take care of some expenses I had in getting the loan. There were a number of trips made to San Francisco to get the \$42,000 together. I made one trip to Austin, perhaps two trips to Austin, by automobile, perhaps some 200 miles across the desert; and also a trip or two to the ranch. Mr. Walsh went up there. I was not the regular attorney of Mr. Walsh at that time. I am not any direct relative of Mr. Walsh. My sister married Mr. Walsh's son. I cannot say that I was acting as Mr. Walsh's attorney generally at that time. I think Mr. Ernest K. Brown, of San Francisco, had done some business for him. [57]

TESTIMONY OF HUBERT W. HILL, FOR DEFENDANTS.

I reside at Susanville, California. I am a son of Thomas Hill, deceased. At the time of my father's death I was engaged in stock raising and a retail meat market. I had charge of the retail meat market in Susanville. My father operated other property besides that. Besides this ranch known as the old Folsom Ranch, he had the ranch known as the old Lonkey Ranch. The ranch I speak of is known as the Willow Creek Ranch,

(Testimony of Hubert W. Hill.)

known as the Home Ranch. I am familiar with the property described in a certain deed made by my father to my mother. That is known as the old Folsom Ranch or the Willow Creek Ranch. At the time he died he was in charge of it. He had my brother, Gay Hill, operating it. Gay Hill was on the Willow Creek Ranch. I know about the delivery of the deed to my mother by Mr. Julian in his office in Susanville. I was present in the office at that time. My brother, Cleve Hill, went with me to Mr. Julian's office. Cleveland Hill is now deceased. We went in and asked him if he had this deed that we heard was made. We asked Mr. Julian, and he said "Yes," and he took it from his safe and handed it to us, handed it to Cleveland Hill. First we took it home and gave it to mother and talked it over. We thought we had better have it recorded at once. By somebody's advice, we were asked to put on the stamps before it was recorded, there were not any stamps on it at the time it was turned over to us. I gave my brother a check for \$100, and he was to go to the postoffice and buy the proper amount of stamps and put them on, and then record the deed. That was the day following the day Mr. Julian gave the deed to us. I am acquainted with Mr. Kearney. The first time I saw Mr. Kearney was in front of the Hotel Golden, in Reno. That was on the occasion when we [58] went to Reno to negotiate for a loan. We had a man by the name of Mr. Sorgi in mind when we left for Reno. My

(Testimony of Hubert W. Hill.)

brother, Cleveland, Seymour Case, and myself went to Reno and met Mr. Kearney. We told him what we were down there after. To my recollection he said he thought he knew a man, and mentioned Mr. Walsh, that would likely make the loan for us. We talked further with him about the condition of the property. After we thought we could get some money from him, we went up to his office. That was after we talked to him. We told him everything we knew about it with regard to the trust deed that father left to mother. We also told him there were no outstanding obligations. In fact, we told him everything that we knew about it. There was something said at that time about probating my father's estate. At that time we talked it over, and Mr. Kearney said he did not think, it was not advice or anything, it was just what he said, he did not think it would be necessary for us to probate it at that time. On that advice we went home immediately afterward and went to see all the creditors that I knew, and asked them not to force us into probate right away. I did that immediately on returning to Susanville. At that time I did not consult any other counsel with reference to the probating of the estate. I did later. At that time that we had the conversation with Mr. Kearney about this loan we knew that there were outstanding claims against our father. They were talked about at the same time. They were all unsecured claims. Those are the people that I notified. At the time when we went to Reno there were only

(Testimony of Hubert W. Hill.)

two secured claims. Those were the claims of the Farmers & Merchants National Bank and Mrs. Lonkey. I know about the disposition of the proceeds of that loan from the trust deed. The \$2500 that Mr. Kearney mentioned [59] as being an item paid to Mrs. Lonkey was for part payment on what is known as the Lonkey Ranch, that had become due, the contract price of the ranch. That was a separate ranch from the ranch described in the deed. The item of \$3300 for interest paid to Mrs. Lonkey was for interest, at the time, on the contract price of the ranch, plus interest on a note secured by a second mortgage on the Willow Creek ranch, on the purchase price of cattle. It was interest on the Lonkey Ranch, which was separate from the Willow Creek Ranch; also interest on the Willow Creek Ranch, a second mortgage which she had, to help secure the purchase of cattle. I know about the \$10,000 deposited in the Bank of Lassen. That was used almost entirely to bring the contract of Mrs. Lonkey to date and to buy additional cattle, so that she would have additional security and release the second mortgage held on the Willow Creek Ranch. The cattle that were purchased with the \$10,000 then became subject to the mortgage which Mrs. Lonkey had, the chattel mortgage. The \$10,000 was not paid directly to Mrs. Lonkey. It was not, except as just stated; it was not paid on any mortgage. The contract that I spoke about on the Lonkey Ranch is a contract for the purpose of the Lonkey Ranch that my father held when he died.

(Testimony of Hubert W. Hill.)

It was finally abandoned and taken over by a man by the name of Jenkins. The Hill heirs, or the Hill Estate did not complete it. It was taken over by a man by the name of Jenkins. The Hill estate did not get a thing out of it.

Cross-examination.

I went to Mr. Julian's office at the instance of George McDow. He was the one that informed us that this trust deed was in existence. I don't mean the trust deed, I mean the deed from my father to my mother. If my mother knew about this deed she had forgotten about it because at that time we did not know of its [60] existence, and it was George McDow who said this was in existence, and we began looking for it. We also took a trip to Reno, to the Farmers & Merchants National Bank where my father had a safe deposit box. We went there to look for the deed before we went to Julian's office. McDow told us that such a deed was in existence. I believe he drew it up. Out of this \$50,000 which was borrowed on the trust deed \$30,000 on the principal and \$1,212 niterest went to the Farmers & Merchants Bank to pay their mortgage. The balance, \$500, went to Kearney, and other incidentals used up the \$32,000. The taxes were not paid out of the \$32,000, but out of the \$8,000 that I got from Mr. Kearney, I believe no taxes were paid; according to my recollection at the present time no taxes were paid.

(Testimony of Hubert W. Hill.)

“Q. What was done with the first \$8,000 you got from Mr. Kearney?

“A. At that time there was an irrigation project going through, and we wanted to get that contract to date, so that we could file an injunction against them and make them pay for the right of way through there.

“Q. You did not expend \$8,000 on that, did you?

“A. A good portion of it. There was \$2500 on the contract purchase price, and \$3200 interest due. I don't remember the exact amounts.”

The \$10,000 paid to Mrs. Lonkey was so we would buy more cattle and bring the cattle up to a certain number. In consideration of giving her more cattle she released the real estate from the mortgage. We paid her no money on the mortgage, we gave more cattle. That was in consideration of the payment of part of the \$10,000. It was left in escrow until the cattle were bought. It was not all used for the purchasing of cattle.

Redirect Examination.

Out of that same money that the interest and principal were paid to Mrs. Lonkey, there was a payment made to Mr. Pon for a mortgage that he held against a parcel of land known as the Hill Land & Livestock Company. He had started foreclosure proceedings, and we paid him off. It was \$1200 and something. Out of that money [61] the Lassen County Bank was paid interest on notes. All interest on notes was brought up to date. The

(Testimony of Thomas Gay Hill.)

land of the Hill Land & Livestock Company was not part of the Hill estate. It was an incorporation. [62]

TESTIMONY OF THOMAS GAY HILL, FOR DEFENDANTS.

I reside at Standish, Lassen County, California, and am a son of Thomas Hill, deceased. At the time my father died, in July, 1922, I resided in Willow Creek. I am familiar with what is known as the Willow Creek Ranch. I resided on that ranch at that time, and had for about 16 years. My father resided in Susanville part of the time, and part of the time on the ranch. My father had active charge and was conducting the Willow Creek ranch, just prior to his death. I was carrying on the business of the ranch under my father's instructions and had been practically all of those 16 years. There was no difference in the manner in which the ranch was conducted and my instructions were received during the period to December, 1917, and after December, 1917. On occasions I sold the produce of the ranch, and turned the proceeds over to my father. That is true during all the time up to the time my father died. I do not know anything about my mother making any claim to be the owner of the ranch between the 15th of December, 1917, and the date my father died. [63]

TESTIMONY OF J. E. PARDEE, FOR DEFENDANTS.

J. E. PARDEE, witness for defendants, testified: The indebtedness of the estate of Thomas Hill, deceased, was in the neighborhood of \$17,000; I think it is \$16,820 besides interest. The assets are 320 acres of land at \$15 an acre, or \$4,800. Then there is a judgment in replevin for \$2,840. Then the stock was sold for \$8,460. There were 14,000 shares of this stock, of which 10,500 belonged to the estate of Hill. We have realized no money on it and there is no prospect of realizing any money on it. The butcher business was carried on by Mrs. Hill for a year or so after Hill's death. My impression is that it was a losing proposition. We have not been able to realize anything on the fittings in the shop. The business had to be abandoned. The loss was a good deal more than \$6,000. We have not done anything toward recovering that from the administratrix's bond or anything of that kind. There is a bond. There was a slaughter house on the land that belonged to the Hill Land & Cattle Company that is covered by this stock organization that we have mentioned. That never has been disposed of. I don't know what that building is worth. I think before administration was started, the boys negotiated for the purchase of another slaughter-house near town. It was acquired and paid for. We sold that under administrator's sale, and the proceeds have been applied

(Testimony of J. E. Pardee.)

to the payment of expenses of administration. The papers that are shown me are signed by Thomas Hill. Those are his signatures.

(Said papers were thereupon admitted and read in evidence, marked Defendants' Exhibit "A," and are as follows:)

DEFENDANTS' EXHIBIT "A."

"INDIVIDUAL OR PARTNERSHIP STATEMENT.

To the Bank of Lassen County.

For the purpose of obtaining credit with you from time to time, I herewith submit the following as being a fair and accurate [64] statement of my financial condition on Apl. 21st 1919:

Assets:

Cash on hand and in bank	500
Notes receivable (state security if any) ...	700
Accounts receivable	120
Stocks and bonds (list on reverse side)	1600
Live Stock:	
Horses	50 7500
Cattle	100 6500
Sheep	30 300
Hogs	250
Salable merchandise	1000
	<hr/>
Total Quick Assets	18,740
Real estate (list on reverse side)	245,000
Machinery and tools (actual value)	11,760
Total	\$275,230

Liabilities:

Notes payable, to banks	2650
Other notes payable	0
Open accounts payable	600

Total Current Debts 5250

Mortgages or liens on real estate	30000
Chattel mortgage	0
Other indebtedness	0

Total Liabilities 35,250

Net Worth \$239,980

Total 275,230

Liability as endorser for others: \$ No.

Are any of above assets pledged to secure indebtedness? As shown.

Life Insurance carried: \$ None payable to ——.

Fire Insurance on personal property: \$8100.00.

Do you carry Employers Liability Insurance?

Yes.

(Over) Signed THOMAS HILL.

STATEMENT OF THOMAS HILL.

Location Lassen County: 3500 acres.

In whose name is title held? Thomas Hill.

Value of land and improvements: \$245,000.

Amount of mortgages or liens: \$30,000.00.

Description of stocks and bonds: Liberty Bonds & Lassen Grain & Mllg. Co. Stock." [65]

“INDIVIDUAL OR PARTNERSHIP STATEMENT OF THOMAS HILL, SUSANVILLE, CALIF.

To Bank of Lassen County, Susanville, California.

For the purpose of obtaining credit with you from time to time, I herewith submit the following as being a fair and accurate statement of my financial condition on June 19, 1922:

Assets:

Cash on hand and in bank	30
Notes receivable (state security if any) . . .	—
Accounts receivable	500
Stocks and bonds (list on reverse side)	1150
Live Stock:	
Horses	80 10000
Cattle	800 36000
Sheep	—
Hogs	50 500
Salable merchandise	500
	<hr/>
Total Quick Assets	48680
Real estate (list on reverse side)	249000
Machinery and tools (actual value)	10000
Other assets	
Hill's Meat Market	10000
Interest in Hart ranch	7000
	<hr/>
Total	364680

Liabilities:

Notes payable to banks	10350
Other notes payable	—
Open accounts payable	2000
	<hr/>
Total Current Debts	12350
Mortgages or liens on real estate	30000
Chattel mortgages—Cattle.....	26000
Other indebtedness	—
	<hr/>
Total Liabilities	68350
Net Worth	296330
Total	364690

Liability as endorser for others: \$ No.

Are any of above assets pledged to secure indebtedness? As shown.

Life Insurance carried: \$ None.

Fire Insurance on personal property: — on real estate \$8000.00.

Do you carry Employers Liability Insurance? No.

(Over) Signed THOMAS HILL. [66]

STATEMENT OF THOMAS HILL.

Description of Real Estate:

Location: Lassen County, 3500 acres. In whose name is title held: Thomas Hill.

Value of land and improvements: 245,000.

Amount of mortgages or liens: 30,000.

(Testimony of J. E. Pardee.)

Location: Lassen County. Equity in 5300 acres.

In whose name is title held: Mrs. C. Lonkey.

Value of Land and Improvements: 4000.

Description of stocks and bonds: Liberty Bond & Lassen Grain & Milling Co. stock."

Cross-examination.

I cannot tell what became of the difference in the property described in the chattel mortgage and what I sued for in replevin. Included in the chattel mortgage you say are stallions and horses. Before adverse possession was taken of that ranch, and perhaps after adverse possession was taken under the claim of the purchaser at the trustee's sale, Mrs. Hill, through her agents, had removed a considerable portion of the personal property there, and we have disposed of it as being the property of the estate of Thomas Hill, and the moneys have all been or will be in the final accounting accounted for as estate assets. What we sued for was simply articles of personal property that still remained on the ranch after our agents had moved away and after Mr. Patrick Walsh, Jr., had been put on there by somebody as representing the Walsh interests. I don't know what became of the difference in the property there. I think Gay Hill might tell you very clearly what became of it. [67]

TESTIMONY OF WILLIAM M. KEARNEY,
FOR PLAINTIFFS (RECALLED IN RE-
BUTTAL.)

WILLIAM M. KEARNEY, recalled for plain-
tiffs in rebuttal.

Prior to the time that I loaned the \$50,000 and took the deed of trust, I did not have any conversation with Hubert Hill relative to that property. He arrived at my office with his two brothers in December, the 16th, 17th or 18th, but no conversation was had with him about the loan, or anything about it. He was talking with Mr. Walsh about the operation of the ranch. I never had any conversation with Hubert Hill prior to the time the loan was made about the manner of delivering the deed or anything at all about it. The property was bid in for \$61,700. That did not include any of the trustee's expenses, or fees under the trust deed, which they lumped at \$5000. The trust deed provides for a specified fee and for incidentals. The entire amount of the deficiency was fixed by the trustees at \$5000.

(It was stipulated that plaintiff filed its articles of incorporation with the Secretary of State and with the County Clerk of Lassen County, and that it was a Nevada corporation, and that it had complied with the law of California about filing the articles of incorporation, and that diverse citizenship exists.) [68]

DEPOSITION OF GROVER C. JULIAN, FOR
PLAINTIFFS.

Testimony of GROVER C. JULIAN, taken by deposition February 6, 1929, on behalf of plaintiffs.

I have already given my testimony in one of these cases before the Court. Prior to the time that I finally handed the deed over to Mrs. Hill I did not know anything about the financial statements made by Mr. Hill in regard to his property and which he gave to the Bank of Lassen County. I first learned of the existence of such statements made by Mr. Hill at the time of the trial of this action in San Francisco in the United States court last summer.
[69]

DEPOSITION OF MARY C. HILL, FOR
PLAINTIFFS.

Testimony of MARY C. HILL, taken by deposition by plaintiffs on February 6, 1929, and introduced in evidence by defendants.

I remember Mr. Kearney and Mr. Walsh loaning me \$50,000. Before the money was loaned I had no talk with Mr. Kearney about the matter. Mr. Case and my son did all that. They were doing all my business for me. They were acting for me. I was at home in Susanville when they went to Reno. I don't remember the letter to Mr. Kearney (Plaintiffs' Exhibit 2), but I sure put my name down, but I didn't write that letter. I signed it and suppose I ought to know what it is, but I didn't write

(Deposition of Mary C. Hill.)

it. It was written either by my son that is dead or Mr. Case. I have read it and noticed it stated that this Willow Creek Ranch was owned by me. I thought it was. At that time I did honestly believe it belonged to me, after Mr. Hill passed away. I know that part of the money that I got from Mr. Kearney and Mr. Walsh went to pay off the mortgage to the Farmers and Merchants' Bank. I am not sure about some of it being used to pay off the mortgage to Mrs. Lonkey. I wouldn't say. The way we paid Mrs. Lonkey, you know Jenkins bought the place. We may have paid her some. I think there must have been some money left of the \$50,000 after paying the amount that was paid on the two mortgages, either for principal or interest and the taxes that were on the property. I don't know how much was left over, because Mr. Case and my son were doing the business and I let them go ahead and do it and I can't remember anything about that. My husband in his lifetime was accustomed to bank at the Bank of Lassen County. I never had an account there, but my husband did. I don't think I had anything to do with the two statements that were made by Mr. Hill to the Bank of Lassen County. I do not remember ever seeing them. I never [70] have gone with Mr. Hill to the Bank of Lassen County at any time. Since this litigation has arisen, I have never seen those statements.

“Q. You say that when you borrowed this money from Mr. Kearney and Mr. Walsh, you thought that

(Deposition of Mary C. Hill.)

you owned that property, and I will ask you why did you think you owned the property?

“A. I always thought when the husband died the property went to the wife. That is the way I supposed I owned it. Of course, I knew there was indebtedness on it and I intended to pay that whenever I could, but otherwise I supposed it belonged to me.”

I have heard what is referred to as the estate of a deceased person. I knew that Mr. Hill left some estate; some property of his own. It was all in his name. I did notice in this letter I stated very carefully that certain of the property was in my name and some other property was in the name of his estate.

“You knew, didn’t you, that the property known as the Willow Creek Ranch was in a different position as to its title than the other property that Mr. Hill had owned, didn’ you?”

“A. Maybe I don’t quite understand that.

“(Question read.)

“A. No, I don’t think I did.

“Q. I just want to read this part of the letter to you again, Mrs. Hill, to refresh your memory. (Reading:) ‘After considering your letter relative to the matter of a loan from Mr. Walsh, will advise that we are still desirous of making the loan, but don’t believe we should offer as permanent security any property or equity that are part of Mr. Hill’s estate. There would then remain the Willow Creek Ranch with machinery, horses and all personal

(Deposition of Mary C. Hill.)

property connected with it.' By that you mean you couldn't give security that belonged to Mr. Hill's estate, but could give the Willow Creek Ranch?

"A. That never entered my head. I never noticed that at all. I don't think there is anything to that.

"Q. Do you remember, Mrs. Hill, seeing a deed from your husband to yourself of the Willow Creek Ranch?

"A. I know I made such a deed, but I never read it and it never was read to me. He told me he was going to make it, but I didn't read it. (See correction, p. 9, line 21.)

"Q. When did you see it?

"A. I think it was in Julian's office.

"Q. Who was at Mr. Julian's office when you saw it?

"A. I don't think it was—where is Gay? Gay would know.

"By Mr. PARDEE.—You answer from your own knowledge.

"By the WITNESS.—All right then. My son and Mr. Hill and myself and Mr. Julian.

"By Mr. TREADWELL.—Do you remember about when that was?

"A. No, I don't remember the exact date because I didn't keep it in memory. [71]

"Q. It was about how long before your husband's death?

"A. That was in nineteen hundred and fifteen, wasn't it, Mr. Pardee?

(Deposition of Mary C. Hill.)

“By Mr. PARDEE.—It was in nineteen seven-teen.

“By the WITNESS.—He died in twenty-two.

“By Mr. TREADWELL.—It was several years before he died?

“A. Yes. I can't remember the dates and things because I didn't impress it on my memory.

“Do you know who drew that deed?

“A. Well, Mr. Julian did.

“Q. Where did you come from before you went to Mr. Julian's office?

“A. From over home here in Susanville.

“Q. Do you remember whether he had the deed at the home before you came over?

“A. I think it was in Mr. Julian's office.

“Q. You said he told you he was going to make the deed to you?

“A. Yes, that was over home here.

“Q. Just before you went to Mr. Julian's office?

“A. Yes, sir.

“Q. What did he say?

“A. He said he was going to make a deed. When he passed away, that he wouldn't have any trouble probating and when he had passed away that he wouldn't have any trouble. That was his intentions.

(See correction, page 11, line 6.

“Q. Was there more than one deed at that time?

“A. Not that I know of, concerning the ranch.

“Q. Concerning that ranch or other property?

“A. No. Not any more that I ever heard of.

(Deposition of Mary C. Hill.)

“Q. Did he say anything about giving you the home property?

“A. No. He just said he was going to make the deed to me.

“Q. The home property or Willow Creek Ranch?

“A. That was afterwards.

“By Mr. PARDEE.—I think I have the deed here. She may be mistaken. We might as well get it right.

“By Mr. TREADWELL.—You have a little home property here in Susanville?

“A. Yes, sir. That is my homestead. You are not going to touch that.

“Q. Not even the bank.

“A. No, they can't touch it.

“Q. Mrs. Hill, irrespective of when it was, whether it was at the same time he made a deed to you of the Willow Creek Ranch, you remember he told you he was also going to make a deed to you of the home?

“A. No, that was after that when he said that about the home. You mean the home over here?

“Q. Yes.

“A. No, there was nothing said about that. That was my homestead and I didn't worry about that.

“Q. Do you remember whether it was before or after the deed to the Willow Creek Ranch he made the deed to the home place?

“By Mr. PARDEE.—I think in fairness to the witness it is well enough to tell her the two deeds

(Deposition of Mary C. Hill.)

appear to have been [72] *been* executed and acknowledged both on the same day.

“By Mr. TREADWELL.—I want to get her evidence on that.

“By Mr. PARDEE.—Her memory is quite faulty.

“By Mr. TREADWELL.—As a matter of fact I don't care much about the date. Do you remember at some time he told you he would deed you the home place? A. Yes, sir.

“Q. Do you remember when he drew the deed or who drew it to the home place?

“Didn't you, Mr. Pardee?

“By Mr. PARDEE.—No. I wasn't acting as his attorney at that time and I never drew it.

“By the WITNESS.—I can't say that.

“By Mr. TREADWELL.—Now, do you remember whether before going to Mr. Julian's office you went to Miss Lowe's office—the Notary?

“A. No, I don't think we went there that day.

“Q. You know Miss Lowe? A. Yes, sir.

“Q. You don't remember going there?

“A. No, I don't remember going there at all.

“Q The only place you remember going was to Mr. Julian's office? A. That is all.

“Q. Now, you had known Mr. Julian before that time? A. Yes, I met him.

“Q. Had he done any legal work for you or your husband?

“A. Not for me, but I couldn't say—He was Mr. Hill's lawyer then and I couldn't say what the transaction was.

(Deposition of Mary C. Hill.)

“Q. When you went down there you knew Mr. Hill was going to convey the Willow Creek ranch to you? A. Yes, sir.

“Q. When you went to Mr. Julian’s office what was said and what was done? (See correction, page 13, line 16.)

“A. That was a long time ago. I don’t know what was said now, but I guess the deed was already and I put my signature on it. I must have.

“Q. Didn’t Mr. Hill tell Mr. Julian he wanted to deed this property to you?

“A. He surely must have or he wouldn’t have made the deed. He must *knew* what he was doing.

“Q. When you got through were the deeds left there?

“A. I thought it was left at Julian’s office but I don’t know. I wouldn’t say. I don’t want to say something I don’t know.

“Q. After Mr. Hill’s death you sent to Mr. Julian’s office to get the deed?

“A. Not right away. It was a long time before we could find it. We didn’t know where it was. We went to Reno. Mr. Case can tell that. And we went to Curler’s and went to the Lassen County Bank and McDow’s and couldn’t find it and my son met Mr. Julian on the street and asked him if he had any papers belonging to his father and he said there was papers in the safe and went up and found the deed.

“By Mr. PARDEE.—It is hearsay, but we don’t object.

(Deposition of Mary C. Hill.)

“By Mr. TREADWELL.—Q. You got both the deed for the Willow Creek Ranch and the deed for the home place in Mr. Julian’s office at that time?

“A. I don’t remember that. I know we got the Willow Creek deed. [73]

“Q. You didn’t really go yourself to Mr. Julian’s office to get the deed? A. No, sir.

“Q. You sent Mr. Case?

“A. It was Hubert.

“Q. Your other son.

“A. My other son.

“Q. How long had you been married, *Mr. Hill*, to *Mr. Hill* at the time of this transaction?

“A. How long had we been married?

“Q. Yes.

“A. We were married in eighty-one. I was going to say eighty-two, but I don’t think that is right. Eighty-one. My memory is pretty bad.

“Q. I have seen worse. At that time *Mr. Hill* had a large amount of property other than the ranch itself? A. When we were married?

“No. In nineteen seventeen.

“A. Well, I don’t know. I don’t know as he did. He had property over in Long Valley.

“By Mr. PARDEE.—In this county?

“By the WITNESS.—Yes, sir. But I don’t think that ever amounted to anything. Just sheep range and he sold his sheep and let the range go.

“By Mr. TREADWELL.—He had cattle didn’t he?

(Deposition of Mary C. Hill.)

“A. Yes, he had some cattle on the ranch. The Lonkey cattle. You read in that letter.

“By Mr. PARDEE.—I think Mr. Treadwell’s question referred to nineteen seventeen didn’t it?

“By Mr. TREADWELL.—Yes. Back in seventeen. At that time he had lots of cattle, didn’t he?

“Not so very many. Some. I don’t know how many. I couldn’t say.

“Q. He had this market here in Susanville, didn’t he?

“A. The market here wasn’t very good.

“By Mr. PARDEE.—Was the Hill’s meat market running in nineteen hundred and seventeen?

“A. I didn’t refer to that. He sold to butchers that would come in and buy cattle from him.

“Q. Did he have a store or meat shop?

“A. I don’t think he did then.

“By Mr. TREADWELL.—What did he have?

“A. You will have to call on somebody else as to when he opened the meat market.

“Q. Did he have as much property in nineteen seventeen as he did in nineteen?

“A. I suppose he did. I don’t know of any that was disposed of. Just a few cattle, maybe, or something like that.

“Q. Did he give any other reason why he wanted to deed this property to you, any reason other than the fact that it would save any probate trouble?

“A. I never heard him say. That is the only reason he ever gave me.

(Deposition of Mary C. Hill.)

“Q. Did he say he was going down to Mr. Julian’s office to have him fix it up?

“A. I presume he did say that. I know he told me to get in the car, I guess, and come over now.

“Q. Now, after that time you continued, of course, to live with Mr. Hill up to the time of his death?

“A. Yes, sir. [74]

“Q. And did he ever say anything more about the fact that he had deeded the property to you?

“A. I never heard it mentioned after that. Never heard anything more about it.

“Q. Do you remember after Mr. Hill’s death, your selling a right of way over the Willow Creek property to the Irrigation District?

“A. Yes, I remember that. He started that himself but he passed away. We had to get it through because they were going to force it.

“Q. They were going to condemn?

“A. They were going to, yes, sir.

“Q. You made a deed right away?

“A. Yes, sir. Mr. Williamson from the city, we got him to do the transaction. They would go through anyway.

“Q. You signed the deed and got the money?

“A. I surely must have.

“Q. Do you remember how long that was after Mr. Hill’s death that you did that?

“A. It took a little time to get things straightened out, but I can’t recall how long it was. It wasn’t so terribly long.”

(Deposition of Mary C. Hill.)

(It was thereupon stipulated that the agreement entered into with the Tule Irrigation District and Baxter Creek Irrigation District with Mary C. Hill for the rights of way was dated December 23, 1922, and acknowledged on that date. That was after Mr. Hill's death. It was just signed Mary C. Hill individually.)

Cross-examination.

“By Mr. RANKIN.—How old are you, Mrs. Hill? A. Sixty-eight.

“By Mr. PARDEE.—What year were you born?

“A. June.

“Q. What year?

“A. I don't know, I will have to figure it up.

“By Mr. RANKIN.—Your answer is sixty-eight now?

“A. Yes, sir.

“Q. Well now, Mrs. Hill, I understand you to say—

“A. Excuse me. Eighteen hundred and fifty-nine was when I was born. June, fifty-nine.

“Q. I understood you to say that you remember going to Mr. Julian's office. Now at the time that you were looking for this deed after Mr. Hill died, do you remember that then or did it slip your mind?

“A. I hadn't the slightest idea where the deed was because he never told me and I never knew *ah*t become of the deed. I begin to think there was no deed. Mr. Julian wasn't Mr. Hill's [75] lawyer when he died. He had Curler and I never thought of going there. That is why I didn't go to

(Deposition of Mary C. Hill.)

Julian's in the first place and Hubert met him on the street and asked him if there were any papers there and he said yes and we went up there and found it. If we had knew we couldn't have went to Reno looking for it.

"Q. Who was your legal adviser if you had one at the time that you made the deed of the right of way to the water company? A. Mr. Williamson.

"Q. W. F. Williamson of San Francisco?

"A. Yes, sir.

"By Mr. TREADWELL.—How much money did you get from the Irrigation District?

"A. I can't recall that. It wasn't very much.

"Q. About how much?

"A. Have you any idea, Jessie?

"By Mr. BARRY.—How much was it, Mr. Pardee?

"By Mr. PARDEE.—One thousand dollars according to the statement. (See correction, page 19, line 19.)

"By Mr. TREADWELL.—Do you remember when Mr. Kearney and Mr. Walsh took possession of the Willow Creek Ranch? You remember the occasion? I don't care about the dates?

"A. Yes, sir. They put it up for sale and there was no one there but myself, but I don't remember the exact date.

"Q. Did you tell them to take possession of the property? A. I couldn't help myself.

"Q. They came and saw you first?

(Deposition of Mary C. Hill.)

“A. I don’t believe they did. I will tell you if you will let me talk. I am going to tell you a few things. When he put the ranch up for sale—

“By Mr. PARDEE.—I don’t think that is material.

“By Mr. TREADWELL.—Didn’t Mr. Kearney come to you and tell you he was going to take possession of the ranch?

“A. He never come near me.”

(Upon signing this deposition the witness made the following corrections:)

“Page 9, line 21.

“A. I didn’t make the deed, but he did. I know that. I know he made the deed, but I didn’t read it. I signed it. No, I didn’t sign it. That wasn’t the paper I signed that day. He told me he was going to make it but I didn’t read it.

“Page 11, line 6.

“A. It must be he meant that I wouldn’t have any trouble but I don’t remember. There must be a mistake there some way. That I wouldn’t have any trouble. Wouldn’t have to probate when he passed away. That is what he meant by it. That is what he said. He said that if I passed away first it would be his. Go to him. That is as near as I can remember the talk.

“Line 16, page 13.

“Q. When you went to Mr. Julian’s office what was said and what was done?

(Deposition of Mary C. Hill.)

“A. It is a long time ago and I don’t recall what was said and done that day. I thought Mr. Julian made the deed, but I guess he didn’t. [76]

“By Mr. ROBINSON.—Q. Do you know who did make the deed?

“A. I was told George McDow did.

“Page 11, line 6.

“Q. Now, Mrs. Hill, just before you went to Julian’s office you had a conversation with your husband. I am referring to the time you went there to execute the deed.

“A. I didn’t know anything about having the deed made until that very day.

“By Mr. ROBINSON.—Q. Did you have a conversation with him before you went to the office?

“A. I guess we talked it over but I can’t recall what was said only he was having a deed made and wanted me to go to the office. I can’t recall anything else.

“Q. What did he say as to the purpose of the deed?

“A. It is down there that he wanted to get it so if he passed away I wouldn’t have any trouble and if I passed away first he wouldn’t have any trouble. That is as near as I can recall the conversation.

“Q. You understand if a deed were given to you the property would be yours?

“By Mr. RANKIN.—Object to that as leading and calling for a conclusion.

“By the WITNESS.—Why, yes.

(Deposition of Mary C. Hill.)

“By Mr. ROBINSON.—Q. Did he ever discuss giving you that property before?

“A. No, not until that day.

“Q. He did state about making a deed to you at that time? A. That day?

“Q. Yes.

“A. Yes, he told me that. That is what I went over for but there was other papers made out that day.

“Q. You went over for the purpose of getting that deed did you?

“A. I can't say that, I guess I went over just as much for the other papers too.

“Q. One of your purposes in going over was to get the deed? A. I suppose so.

“Page 19, line 19.

“A. I wasn't there and never went near them.

“Q. Do you remember the occasion when they did take the possession of the Willow Creek Ranch? You remember the fact they did take the ranch?

“A. Yes, sir.

“Q. Were you at the sale? A. No, sir.

“Q. Did you tell them to take possession of the property?

“A. No. I didn't see them to tell them anything. They never come near me.

“By Mr. ROBINSON.—Q. Did you write to them, Mrs. Hill? A. No.

“Q. Did you tell anyone else to tell them?

“A. No, I had nothing to do with that.

(Deposition of Mary C. Hill.)

“Q. Have you discussed this matter, the deposition, with either Mr. Rankin or Mr. Pardee? Have you gone over these questions with either of them?”

“By Mr. RANKIN.—Object on the ground it is improper. No notice of a second deposition and that there is no authority for re-examination of the witness. It is immaterial and incompetent.

“By Mr. ROBINSON.—Have you discussed this deposition with either Mr. Rankin or Mr. Pardee?”

“A. They read it over to me.

“Q. When was that? A. To-day.

“Q. This morning? A. Yes, sir.

“Q. At what place? A. Right here.

“Q. At your house? A. Yes, sir.

“Q. Did you discuss the answers to any of the questions?”

“A. We talked over where there was mistakes.

“Q. Did you find those mistakes?”

“A. Certainly we did.

“Q. Did you find the mistakes?”

“A. When they read it to me I could see where mistakes were.

“Q. And you pointed those out? A. Yes, sir.

“Q. The corrections you made this afternoon were in regard to the mistakes you found this morning? A. Just the same.” [77]

DEPOSITION OF SEYMOUR CASE, FOR
PLAINTIFFS.

Testimony of SEYMOUR CASE, taken by plaintiffs on February 6, 1929.

My name is Seymour Case. I had something to do with the negotiations of this loan by Mr. Kearney and Mr. Walsh to Mrs. Hill. I am Mrs. Hill's son-in-law. I wrote the letter dated October 19, 1922 (Plaintiff's Exhibit 2). I probably discussed it with those other parties before I sent it. I don't remember the time of doing it, but I probably did. I can testify as to the distinction we made between the property in the Hill estate and the Willow Creek ranch. We based that distinction on the belief that the Willow Creek ranch was Mrs. Hill's own individual property, I presume. I knew of this deed that was made by Mr. Hill to Mrs. Hill in nineteen hundred and seventeen at that time. I knew who got it from Mr. Julian and where it came from. I, of course, honestly believed that property was hers at that time. I knew that Mr. Kearney was expecting to get a valid mortgage lien on that property. I discussed with Mr. Kearney the proposition of getting the \$50,000. I think the particular necessity at that time was on account of the money due Mrs. Lonkey for interest or something that was pressing, being the first immediate consideration. Later the larger loan was to take up the trust deed of the Farmers' and Merchants' Bank on which there was interest overdue. The

(Deposition of Seymour Case.)

principal and interest were overdue. The first eight thousand dollars was used largely to take care of the interest or something else on the Lonkey loan, and the second or larger amount was used largely to take up the loans of the Farmers' and Merchants' Bank. There was little money left over from the amount that was paid to get the Lonkey release and the amounts paid to get the release of the Farmers' and Merchants' Bank and pay the taxes on the property. I think a small amount. I don't remember what it was. [78] I do not recall ever having any talk with Mr. Hill about having deeded this property to his wife. At the time that I obtained the loan from Mr. Kearney and Mr. Walsh, and at the time I wrote that letter, I don't think I knew anything about these financial statements that Mr. Hill is said to have made to the Bank of Lassen County. I do not remember ever seeing them, although I may have seen them at the bank, but I don't recall having seen the financial statement. We prepared a statement of resources. I think that was made independent of any statement Mr. Hill made. I am referring now to the statement that we made to Mr. Kearney in nineteen twenty-two. Before the negotiations were started at all with Mr. Kearney and Mr. Walsh, we went to the Bank of Lassen County, Mrs. Hill's sons and myself, shortly after Mr. Hill's death, and talked with Mr. Bridges about the best plan to follow and discuss the chain of affairs. We spent some time in there discussing

(Deposition of Seymour Case.)

what we desired to try to do. That was to get a loan. Mr. Bridges was cashier of Bank of Lassen County. As the transaction was being consummated there had to be certain transactions carried through in order to get the release of the Lonkey mortgage. I don't recall exactly where the papers were held, but it seems to me the money had to be turned in and went through the Bank of Lassen County and deposited there before the papers were released. I don't recall the details of how that was carried through, but the money was deposited as we got it two different times with the bank and I presume Mr. Bridges had the papers. Mr. Bridges knew this money was coming from Mr. Kearney and Mr. Walsh, and they knew that Mrs. Hill was borrowing it. At that time there hadn't been any administration at all on Mr. Hill's estate. At the time of Mr. Hill's death he had considerable property other than the Willow Creek Ranch; quite a large amount of cattle at the time he had what we call the Lonkey cattle, a considerable number. I think [79] he had some cattle beside the cattle that were under the Lonkey mortgage. Not a great many, I don't suppose. He had a shop, Hill's Meat Market, and a slaughter-house, and then he had an interest in the Hart ranch. That was a corporation in which he had stock. After his death there was a big slump in the cattle business and the value of cattle and value of cattle land. I think about that time or maybe before his death. They were low during those years and immediately follow-

(Deposition of Seymour Case.)

ing his death. I am not in the stock business myself and wasn't at that time and didn't follow that closely. I don't know whether there was a slump in 1919, 1922, or 1924. I remember the sale of the Willow Creek property by Mr. Kearney or Mr. Walsh. I don't remember how much we tried to get a Federal loan on the property. We discussed it. We didn't go to the Farm Loan Bank in person. We may have written, but I don't recall. I don't recall that we went to Mr. Fleming; we might have, and probably discussed the probability of getting a loan from him. I had no authority to sell the property. I believe I suggested it to Mr. Fleming if he was interested in buying it, but I had no authority from Mrs. Hill or the estate to sell it. I never got any offer for the property myself. I don't recall particularly that Mr. Hill gave an opportunity to the Hill people to sell the property. I might have discussed it with the boys. I know what I thought the property was worth at that time, when I was making these negotiations. I know Mr. Kearney and Mr. Walsh at any time were willing to step out of the picture if they got their money back. The only talk I particularly remember with Mr. Bridges was when I and several of her sons were there and was shortly after Mr. Hill's death, and I don't recall whether or not the deed had been found at that time.

“Q. Do you remember whether you talked to Mr. Bridges about the fact Mrs. Hill owned this particular property and could get money on it.

(Deposition of Seymour Case.)

“A. I don’t recall that particular conversation, but that is the way we felt and no doubt we did tell him Mrs. Hill owned it. We thought she did.”
[80]

Cross-examination.

Prior to the letter of October 19, 1922, I had conversation and negotiations with Mr. Kearney relative to this loan. Very shortly after Mr. Hill’s death I and the Hill boys went to Reno on this Hill business. The first trip was before the deed was secured from Mr. Julian’s office. The object of the trip was looking for the deed. Hubert was with me, and I can’t recall whether it was Gay or Cleve was the other one. There were three of us. I can’t recall whether we met Mr. Kearney on that trip or not. It wasn’t later than the second trip that we saw Mr. Kearney relative to some of these transactions. I might have seen him on the first trip. It was at least on the second trip. I could not say for sure whether we saw him on the first trip. If we did and talked with him we wouldn’t have known of the deed. Afterwards I don’t recall definitely what we said to him about the deed, although I am sure we told him of the existence of the deed, because it was on that we based our belief we could negotiate the loan and asked him to help us. Subsequent to that time we discussed it at length and no doubt I did tell Mr. Kearney, I am positive I did tell him I thought the deed was good and the circumstances of it. I couldn’t say his exact words, but I am sure he told me he thought

(Deposition of Seymour Case.)

likewise or he wouldn't have made the loan. He said he would require all the heirs joining in the deed before the loan was made. I can't recall definitely what he did tell me,—of his telling me why, except, I think as a precaution to make the loan safe and so the heirs would be prevented from making trouble in any way. That was my understanding of the reason for them having to sign the papers. It was in a general way to make the loan safe as he could make it. All of these conferences were at Reno. We may have talked some here. Mr. Kearney was up here but I guess it was later in the negotiations. [81] The first transaction when the \$8,000 were secured, the negotiations were closed at Reno, but Mr. Kearney came out here in connection with the signing of the papers and he may have come out at that time, but the negotiations were carried on in Reno. I think the \$8,000 was paid by Mr. Kearney to me, and I brought it back out. I wouldn't be sure about that or whether it was a later amount, but one check I brought personally back and deposited it in the bank. The \$10,000 deposit in the bank may have been sent direct to the bank, but I am sure I brought out his check here, the personal check of Mr. Kearney. I don't recall which one. I don't recall now whether the remaining \$42,000 was paid in one amount or how, but I remember bringing the check. I think the \$8,000 was used by the Hills to pay Mrs. Lonkey certain amounts. I don't know the exact amount, but it seems to me most of that

(Deposition of Seymour Case.)

amount was paid to Mrs. Lonkey. I am not absolutely sure now whether it was paid for interest on the buying of the ranch or payment on the cattle, interest on the cattle. I can't recall. I know at the time Mr. Hill died, and up to that time that they held a contract for the purchase of the Lonkey ranch and there were payments due on that at the time the \$8,000 was borrowed. Whether or not that money was paid on that contract or on the cattle, I can't say. Mrs. Lonkey had a chattel mortgage against the cattle at that time. As to the \$42,000, I can't recall exactly how that money was paid. I had something to do with it. I believe I wrote a statement of how the money was paid at that time. (The paper shown to witness.) I wrote that paper myself immediately following the closing of the deal and making the payment of the money to the bank in Reno. It may have been some little time afterward, but my best recollection is it is shortly after I made that, I presume for Mrs. Hill. Refreshing my memory from this statement, [82] I would say those figures are correct as to when the payments were made and the amounts. The last item here is check deposited to account of Mary C. Hill for purchase of cattle, \$10,000. That was just as it says there. That much of the money was deposited in the Bank of Lassen County to Mrs. Hill's credit for the purchase of additional cattle to put on the Willow Creek ranch.

(Paper was here admitted in evidence, marked Defendant Mary C. Hill's Exhibit "B," and is as follows:

DEFENDANT MARY C. HILL'S EXHIBIT "B."

"Apportionment of \$42,000.00 Received from Patrick Walsh on Loan.

By Seymour Case.

Notes taken up at Farmers & Merchants Bank \$30,000

Interest on notes, June 15th to Dec. 29th 1,212.50

Fee to Bank's Atty.'s for deed of reconveyance 25.00

Int. on \$8,000 loan from Kearney, to date of new loan 167.00

Attorney fees to W. M. Kearney 500.00

Revenue stamps on Walsh note of \$42,000 8.40

Chk. deposited to acct. of Mary C. Hill in Lassen Co. Bank 87.10

Total 32000.00

Chk. dep. to acct. of Mary C. Hill for purchase of cattle 10000.00

Grand Total 42000.00.")

I have no record as to how the money was paid out from the first advance of \$8,000. I don't know definitely that I had to do with the actual paying

(Deposition of Seymour Case.)

out, but I know the purpose of getting it. The statement you show me in the form of a receipt I don't ever remember of seeing before. The items refresh my memory. It confirms my recollection of the purpose of the loan. I don't know that the purpose of the loan was to secure money to pay Mrs. Lonkey some principal and interest on the Hill Lonkey escrow for the ranch purchase or that the money was gotten for what was most pressing then, but the Lonkey indebtedness, as that indicates, whether it went on cattle or ranch. It is my belief it was paid in about that way. We didn't take the advice of any attorney in connection with the transaction for securing this loan of \$50,000. [83]

Cross-examination.

The first item in Exhibit "B," "Notes taken up at Farmers' and Merchants' Bank, \$30,000," was the payment of the note or mortgage of Mr. and Mrs. Hill to the Farmers' and Merchants' Bank which was secured by mortgage or deed of trust to Kirman and Harris of the Willow Creek ranch. I don't know how it was made, but it was a trust deed on the ranch. It was a loan and secured by a deed of trust. The next item, "Interest on notes, June 15th to December 29th, \$1212.50," meant interest on the same notes to the Farmers' and Merchants' Bank. The next item, "Fee to Bank's Attorneys for deed of reconveyance, \$25.00," I understood I was required to pay that as one of the expenses in connection with that loan in the Far-

(Deposition of Seymour Case.)

mers' and Merchants' Bank. It was paid to the bank's attorney. The item, "Interest on \$8,000 loan from Kearney to date of new loan, \$167.00," was interest on the part of the money Mr. Kearney had already loaned and which was represented by the \$8,000 note. After the item, "Attorneys fees to W. M. Kearney, \$500.00," I knew that Mr. Kearney really procured Mr. Walsh to join with him in the loan of this money. I went to Mr. Kearney in this matter because I knew him. I had known him for many years, and was friendly with him in every way. I knew, of course, that he was an attorney at that time. I know that he had negotiated and found loans for different people. I don't believe the \$500 was ever discussed until the matter was entirely closed up and then it was completed. My recollection is I suggested the amount that would be proper. I do not know of any legal service that he performed for Mrs. Hill at all. I don't know that he saw Mrs. Hill, except the time he went to the house to sign the papers. The transaction was carried on almost entirely by myself and one of Mrs. Hill's sons with Mr. Kearney. [84]

"Q. You didn't ask him for any advice as a lawyer?"

"A. We discussed the matter, but I considered him particularly as securing this loan for us. That was the purpose."

The next item, "Revenue stamps on Walsh note of \$42000 \$8.40," was the revenue stamps on this particular note we gave to Walsh and Kearney.

(Deposition of Seymour Case.)

The next item, "Check deposited to account of Mary C. Hill in Lassen County Bank, \$84.10," that was the full amount of balance that went to Mrs. Hill. The next item, "Check deposited to account of Mary C. Hill for purchase of cattle, \$10,000," was in fact deposited with the Bank of Lassen County. It was deposited with them under instructions that it should be used for the purchase of cattle on which Mrs. Lonkey would obtain a lien as security for her loan and that in consideration of that she would release her lien or mortgage on the Willow Creek ranch. That was the proposition or purpose of that particular amount of money, to buy the cattle, but I don't know that the bank had instructions to buy them. It seems to me that we went out and Mr. Gay Hill selected the cattle and negotiated the price. Perhaps the bank was to see that they were bought. At that time Mrs. Lonkey, as security for the money that Mrs. Hill owed her, had a mortgage, not only on the cattle but on the Willow Creek ranch. It was part of my arrangement with Mr. Kearney and Mr. Walsh that that mortgage would be released so far as the Willow Creek ranch was concerned, so that they would have a first mortgage on it; on the other hand, I made an arrangement with Mrs. Lonkey that she would release that provided we would use ten thousand dollars of this money for the purchase of cattle on which she would have a chattel mortgage, but I don't know that we were required to use all of the ten thousand dollars, but we were to get so many cattle as addi-

(Deposition of Seymour Case.)

tional security. The ten thousand dollars was used for that purpose as a matter of fact. The purpose of the preliminary loan of eight [85] thousand dollars was on account of the fact that the interest was overdue on the Lonkey loan and the loan from the bank. Both of them were clamoring for their interest. It was a serious situation for my people.

Cross-examination.

I think it was likely there was interest and some principal due on the Lonkey contract for the purchase of the Lonkey ranch from the Hills to Mrs. Lonkey. Interest was overdue on nearly all of the obligations, and she was clamoring for that money as well as the mortgage money, I presume.

Redirect Examination.

In regard to the children of Mrs. Hill signing these notes to Mr. Kearney and Mr. Walsh, this business of Mr. Hill's was being carried on by the children of Mrs. Hill, or some of them. Some of them were actively in charge of the properties. This particular ranch was being managed by Mrs. Hill through some of the boys. Everything was discussed with Mrs. Hill and her consent was gotten before it was done. Mr. Kearney wanted that additional personal security of those children, he must have wanted them. [86]

DEPOSITION OF MISS ALCESTA LOWE,
FOR PLAINTIFFS.

Testimony of MISS ALCESTA LOWE, taken by plaintiffs by deposition February 6, 1929.

My name is Alcesta Lowe. In November, 1917, I was a notary public in and for the County of Lassen. My office was at the Lassen County Abstract Company's office. I was acting not only as a notary, but in the capacity of preparing conveyances for the company and typewriting and searching records. I knew Thomas Hill quite well. I remember the occasion of the preparation and acknowledgment and execution of a deed dated the 15th of November, 1917, signed by Thomas Hill and purporting to be acknowledged on the same date by myself, and a deed dated the same day by Thomas Hill to Mary C. Hill, the first one being a conveyance of the home property and the second one being Exhibit "A" attached to the complaint and being the Willow Creek Ranch. I remember when they were executed, but I don't remember the exact dates, but I remember Mr. Hill coming in and having those deeds made out. They were actually prepared in my office and acknowledged in my office. I can't say that I have any further recollection as to anything Mr. Hill said at that time.

Cross-examination.

This deed is on a form of the Lassen County Abstract Company, Susanville, California. Those

((Deposition of Miss Alcesta Lowe.)

forms were supposed to be used only in that office as far as I know. The abstract which you show me I made and is a correct abstract of the record of the trust deed, dated December 15, 1917, from Thomas Hill and Mary C. Hill to Richard Kirman and Walter J. Harris, as trustees of the Farmers' and Merchants' National Bank, being the beneficiaries. I can't say whether these deeds were acknowledged by Mrs. Hill at my office or her house. I think she has been in the office there at different times and I have gone out to her house, but about this particular [87] instrument, I can't say. I can't say whether these deeds were taken away from the office at that time by Mr. Hill or whether they remained in the office for several days. The trust deed to Kirman and Harris was acknowledged on the 15th day of December, 1917, and recorded as of the same day at the request of L. D. Folsom. He resided at Reno, and is now dead. I don't know that he was there at the time the papers were signed, but he was there when the transaction was being closed. The exact time when Mr. and Mrs. Hill signed the papers, I can't say. He had some interest in the money and was very anxious to see it was closed. [88]

TESTIMONY OF W. M. KEARNEY, FOR
PLAINTIFFS (RECALLED).

I remember the letter which I received from Mr. C. H. Bridges, cashier of the Bank of Lassen County, already introduced in evidence. The letter

(Testimony of W. M. Kearney.)

is dated December 21, and I think I was in Susanville the day before. I went to the Bank of Lassen County at that time. As I understood it, Mr. Pardee was attorney for the bank at that time. I did not talk with Mr. Pardee. I did not meet him, but I met Mr. Bridges, the cashier. At that time he did not tell me, nor did anybody tell me, that the Bank of Lassen County had these written statements that had been made by Mr. Hill as to the property that he had for the purpose of getting credit. I knew nothing of those until after this suit had started. At the time I and Mr. Walsh loaned this money and took this deed of trust to secure it from Mrs. Hill and her children we did not have any knowledge or information with regard to any such statement ever having been made by Mr. Hill. The first talk I had with Mr. Bridges was shortly after October 6, 1922, when I received a letter from Mr. Seymour Case, who was then acting as Mrs. Hill's agent and doing business for her. At that time they had spoken for the loan and expected to get it from a Mr. Sorgi. In this letter Mr. Case had me hold up the negotiations until Mr. Sorgi could see whether he would make the loan after examining the property. In his letter he said, "Yet, if not, we can no doubt get it from a bonding house or bank, even though at some considerable expense. Bridges will undertake to help us get it in that way if we desire, but we will first talk it over further with you." A few days after that I went to Susanville and talked with Mr. Bridges about it. At that time

(Testimony of W. M. Kearney.)

there was no statement made, whatever, regarding the loan to Mr. Hill personally, or these notices or statements [89] which you have just asked about. At that time we talked over the loan of \$50,000, and Mr. Bridges, in a general discussion, said they needed the \$50,000, and the question of the \$30,000 loan at the Farmers & Merchants Bank at Reno, and the Lonkey \$27,200 was still outstanding, and he said that \$50,000 was necessary to clean up the pressing indebtedness. They were then negotiating with the Federal Land Bank, trying to get a loan from it. We had a full discussion of the matter at that time at the bank. I did not have my papers prepared at that time for the loan. That was shortly after October 6th. I was instructed to drop it during the time Mr. Sorgi was negotiating about it. In November they asked me for the loan again, and asked if I would not try to get Mr. Walsh to make the loan if he had not made some other disposition of the money. Then on the 19th of December, the 19th or 20th, I don't know which, but I would rather say the 20th of December, I was at Susanville with the papers and talked with Mr. Bridges at that time. He advised me that Mrs. Lonkey had some sort of an agreement with Mrs. Hill regarding the release of this mortgage. We had prior to that time talked it over in a general way. The bank was instructed by Mrs. Lonkey, some instructions that I only knew about in a general way, that if we would deposit with the Lassen County Bank \$10,000 of the \$50,000 that we

(Testimony of W. M. Kearney.)

were loaning, that she would deposit with them a release of the \$27,200 mortgage on the ranch, which was a second mortgage, and give us a clear title to the property in the trust deed given by Mrs. Hill. We had a general and full discussion of it at that time with Mr. Bridges. He was handling the transaction for Mrs. Lonkey, through Mr. Pardee. He advised me that Mr. Pardee was Mrs. Lonkey's attorney. The matter was gone into thoroughly at that time. He knew that we were making the \$50,000 loan. The papers [90] were left with him. He had some of the papers there. I am not sure whether I asked him to have Mr. Case, who was acting for Mrs. Hill, record them, or not. The following day, after a full discussion of the entire transaction, what we were doing, and all about it, Mr. Bridges took the \$10,000 and got the release of the mortgage and wired me on December 21, 1922, and I have a confirmation of the telegram, I think the original is already in evidence, I am not sure about that, but this is the confirmation:

“December 21, 1922.

“Have in our possession release of mortgage on the Hill Ranch, executed by Georgiana F. Lonkey. Forwarding copy by mail today.

“BANK OF LASSEN COUNTY.”

I got a letter from Mr. Case stating that the Bank of Lassen itself might help to get this money. I talked to Mr. Bridges about the substance of that letter. If I am not mistaken, Mr. Case took me

(Testimony of W. M. Kearney.)

down there. Whether he stayed and heard the conversation I could not recall now. At that time they were trying to get the loan from the Federal Land Bank so as to get it at a lesser rate of interest, but it would take too long to get the money in that way, they would have to have an appraisal and they could not get that for some months, and it would not serve the purpose at that time. Mr. Bridges was the cashier of the Lassen County Bank and represented the bank, and he was the man with whom I did all the business. The original \$8,000 check which was sent there in September—this was made in two payments, the first \$8,000 and then while the negotiations were going on they tried to get it somewhere else, and did have Mr. Sorgi look at the property, and then, through the bank, were trying to get it from the Federal Land Bank, or some bonding house, or bank. As I was about to say the first \$8,000 was given by Mr. Case. He cashed the check with the Lassen County Bank, and Mr. Bridges made the remark, as he testified, [91] “I would not give the check unless it was good.” I think that is in Mr. Case’s deposition. I delivered the \$8,000 check to Mr. Case, Mrs. Hill’s agent, and it was cashed through the Bank of Lassen County. That was the first \$8,000, and then when we closed the final loan I sent \$10,000 more to the Bank of Lassen County on account of this matter of Mrs. Lonkey, with instructions not to deliver that \$10,000 until we had the release of Mrs. Lonkey’s mortgage, which called for \$27,200.

(Testimony of W. M. Kearney.)

Cross-examination.

The first talk I had with the officials of the Bank of Lassen County was sometime after the 6th of October. The letter from Mr. Case fixes the date in my mind. I did not have anything in writing from the bank at that time. I talked with Mr. Bridges. I think that Mr. Case was present, but I am not sure. The conversation was at the bank. We had a general discussion. He knew that we were proposing to make a \$50,000 loan. We just had a general discussion about the matter as to whether or not they were going to get it from the Federal Land Bank, or what their progress was. I had already advanced \$8,000 and all I had was the stock of the Hill Land & Cattle Company and a third mortgage on the ranch. Up to that time there had been no papers made on the \$50,000 mortgage, except the \$8,000 note and the stock of the Hill Land & Cattle Company, and a third mortgage prepared. It seems to me that is why I went up there, to get that third mortgage or not to record it until the whole loan could be concluded. I again had conversation with Mr. Bridges about the matter either on the 19th or 20th of December at the bank at Susanville. Mr. Bridges was there; I cannot say if anybody else was there. Some officer of the bank, I think it was. In the front end of the bank there was a little alcove there, and I stepped inside the rail. At that [92] time we had a general discussion about the method of releasing the second

(Testimony of W. M. Kearney.)

mortgage of Mrs. Lonkey. I would not advance the money until that second mortgage was out of the way. The first mortgage had already been agreed upon, in Reno, that is, the \$30,000 mortgage. He advised me that Mrs. Lonkey, through Mr. Pardee, had made an arrangement with Mrs. Hill that if they would advance \$10,000, she would release that second mortgage. That \$10,000 was to be deposited with the Bank of Lassen County and used for the purpose of buying cattle to substitute the security of the ranch, that is, as an exchange of security. I am giving the general substance of the conversation. I would not undertake to give it word for word. Mr. Bridges, I think, said that he had an agreement with Mrs. Lonkey. I am not sure whether I had left the release of the mortgage in the form I wanted it or not. And I think possibly the check for \$10,000. I left the \$10,000 check that day. I am not positive of that, but that is my recollection. It seems to me that at a later time I left other loan papers with Mr. Bridges, or the Bank of Lassen County. My recollection is that the entire set of papers, the trust deed, and everything to be recorded, and I think among them was a power of attorney from a number of the Hill children. That is my recollection and that he and Mr. Case handled the transaction together. [93]

TESTIMONY OF C. H. BRIDGES, FOR DEFENDANTS.

My name is C. H. Bridges. I reside at Susanville, California, and have for fifteen years. I am cashier and managing officer of the Bank of Lassen County, and have been during all of that period. I knew Thomas Hill in his lifetime. He was a customer of the Bank of Lassen County. I was the principal officer in charge of loans and things of that nature. I was the managing officer of the bank. I remember the time of Mr. Hill's death on the 24th of July, 1922. At the time of his death he was indebted to the Bank of Lassen County to the extent of about \$8,000. The bank presented the claim to the administratrix of the Estate of Hill on that indebtedness. The total amount of the principal and the date of the claim was \$8,450. No part of the indebtedness has since been paid. There has been some interest paid. I knew Mrs. Georgiana F. Lonkey very well. She was a customer of the bank. We acted in an advisory capacity for her as well as handling her banking business. I was familiar with her claims against the Hill estate. By negotiations through me and Mr. Pardee, Mrs. Lonkey released a second mortgage which she held on the land belonging to Thomas Hill during his lifetime. At the time that release was negotiated I advised with Mr. Pardee as Mrs. Lonkey's attorney, and advised also with her. I consulted Mr. Pardee at Mrs. Lonkey's request. She said she held a second mort-

(Testimony of C. H. Bridges.)

gage on Mr. Hill's Willow Creek ranch and a mortgage on some cattle. The Hill heirs wanted Mrs. Lonkey to release the second mortgage from the land, and after talking with her and with you as her attorney, she decided that if they would bring the cattle up to a sufficient count to furnish additional security, she would release the loan. The chattel mortgage on the cattle was security for the same indebtedness [94] that the second mortgage secured. I don't remember the exact amount of cattle that were to be purchased. We figured it for her the same as we would for ourselves, that we should not loan over 60 per cent of the value of the security, and we attempted to bring the security up to that amount.

(Defendants here offered and there was received in evidence the supplemental chattel mortgage that was given by Mrs. Hill and her children to Mrs. Lonkey as additional security for the payment of the note of \$27,200, and the same was marked Defendants' Exhibit "C." Said instrument was made by Mary C. Hill, Sadie Case, Cleveland Hill, Christine V. Hill, Thomas Gay Hill, Jimmie O. Hill, Lawrence Hill, Mildred L. Hill, Hubert Hill, Joseph Douglass Hill, Robert Elmer Hill and Florence H. Douglass to Georgiana F. Lonkey, and was dated February 7, 1923, and mortgaged 220 head of stock cattle on the Hill ranches in Willow Creek Valley for the security of a promissory note for \$27,200, dated July 10, 1921, given by Thomas Hill to Georgiana F. Lonkey, and secured by mortgage

(Testimony of C. H. Bridges.)

given by Thomas Hill and Mary C. Hill upon certain real property, and 680 head of stock cattle, and recited that the lien of said mortgage upon the real estate having been released, this mortgage is given as additional security for the payment of said promissory note. It is further recited that the parties of the first part were the successors in interest of the said Thomas Hill in the 690 head of cattle, and are the owners of the 220 head of cattle thereby mortgaged. It provided further that they might kill the cattle in their business, paying \$40 a head therefor.)

(Defendants here offered and there was received in evidence and marked Defendants' Exhibit "D" the duly approved and allowed claim of Bank of Lassen County against the Estate of Thomas Hill, Deceased, for \$8,450, and interest at 8 per cent per annum compounded semi-annually from February 15, 1923, on four promissory notes signed by Thomas Hill April 21, 1922, May 13, 1922, May 26, 1922, and June 19, 1922, respectively.) [95]

That \$10,000 deposited with us was for the release of Mrs. Lonkey's mortgage. I do not recall that Mr. Kearney's instructions ever had anything to do with the cattle. The agreement as to the number of cattle that should be acquired in order to bring the total number up to the requisite number was made by Mrs. Lonkey and Mrs. Hill. All of the \$10,000 was not used in the purchase of cattle under my supervision. Almost \$6,000 was used. The Hill boys, and probably Mr. Case had

(Testimony of C. H. Bridges.)

something to do with it, would go out and buy the cattle, give a draft on the bank, and after we were assured that the cattle had been purchased we honored the drafts. We made a sufficient investigation to assure ourselves that title had passed to the Hills for a certain number of cattle, so that the total number was brought up to 900. He was Mrs. Lonkey's representative. I think they drew two drafts on the \$10,000. They paid \$4,936 for cattle they bought from one man and some \$900 from another. When we received the money about December 30, I think we issued a certificate of deposit and put it in escrow. The certificate was drawn for the purpose of the Hill-Lonkey transaction. That was carried that way until January 24, when they drafted on us. At that time we paid out \$4,936; then, afterwards another draft for some \$900, leaving a balance of \$4,097.36, and that amount was turned over to Mrs. Hill, after satisfying herself that there was a sufficient number of cattle. I am acquainted with Mr. Kearney and have known him for over 20 years. I heard his testimony in court this morning. Shortly after the death of Hill, several of the heirs, Hubert W. Hill, Cleveland Hill, Thomas Gay Hill, Joseph D. Hill, all sons of Thomas Hill, deceased, and R. R. McGreggor and Seymour Case, sons-in-law of Thomas Hill, called at our office and negotiated a temporary loan to assist them in their business in the sum of \$2,000. That loan was made on the 29th [96] of July, 1922. We had some con-

(Testimony of C. H. Bridges.)

versation at that time. I do not recall just what the conversation was, but they showed us at the time that they needed the \$2,000 badly, and we advanced it upon the signatures of all of those men that I named. We took their note. It was paid off in three installments. They were operating this big ranch, and were also operating the butcher shop in town, and it took considerable capital and money to keep it going, so that it would not go to pieces. At that time they did not make any statement to me in regard to the title of the ranch property, where it stood. Under a ruling of the State Bank Department we are supposed to have a financial statement not over twelve months old from every one of our borrowers over \$500, and following that rule we took them each year from our borrowers. We are extremely particular about considering them as confidential statements and not as a matter of publicity, because you will find in dealing with all classes of people, some of them object to giving financial statements, and we assure them in every instance that their statement will be held strictly confidential. We go so far as to have a confidential file in our vault, where all of those papers are brought. We are very particular about that, that any statement coming to us and made to us is strictly confidential. That is a rule of the bank, one that I have maintained there. I remember we always had what I considered rather a high value on the Willow Creek ranch. I had knowledge of my own as to the possible value of it. I had a good

(Testimony of C. H. Bridges.)

knowledge as to the value of the Willow Creek ranch, because during Mr. Hill's lifetime I had an opportunity to find a buyer. I had a buyer for that ranch. We could have sold the ranch at one time for \$100,000. I presented it to Mr. Hill, but he said it was worth more money than that, and he would not accept it. Referring to the deed by Thomas Hill as far back as [97] 1917, and finally recorded in the records of Lassen County on the 8th day of August, 1922, I first had knowledge of the existence of that record or of that deed after it was put of record. I don't think it was very long after. I had no knowledge of that before it went of record. My bank had no knowledge of it. The Hill children talked to me at one time when they brought Nick Sorgi up from Reno. They were in with him just shortly before he went to the ranch. I think the purpose of that visit was to make a loan upon the Hill ranch. I did not see Mr. Sorgi when he returned from the ranch. Some of the boys talked to him at other times regarding a Federal Land Bank Loan, but I never entered into that, because we were not an agent of the Federal Land Bank, and I did not have anything to do with that.

“Q. During that time, during any of those conversations, did they state to you upon what basis of security they expected or wished to obtain a loan?”

“A. By a mortgage on the ranch I presume.”

(Testimony of C. H. Bridges.)

I don't recall that they specified the amount that they wanted to borrow. I had knowledge of a trust deed with the Farmers' & Merchants' Bank of Reno in the course of our own indebtedness, but other than that I did not know much about it. I know that at one time he had borrowed money from the Reno National Bank, and also from the Scheeline Bank & Trust Company, but I was not sure of the amount. I do not recall the occasion just referred to by Mr. Kearney as to a certain occasion in October, 1923, when he says he called at the bank and had a discussion on some matters with me, but I do recall that Mr. Kearney never took me into his confidence at all as to what he and his associates were going to do in regard to the Hills. The only time that we ever had any definite instructions or definite talk was at the time that they advanced \$10,000 to take up the Lonkey satisfaction of mortgage. I remember the other occasion that he was there in December, 1922. I [98] I think it was just prior to or at the time the \$10,000 was left there. He never left any papers with me relating to the transaction between himself and Walsh and the Hill heirs to handle for recordation. The only paper that we ever handled for them was the recording of this satisfaction of mortgage from Mrs. Lonkey to the Hills. I do not think he prepared that—I am sure he did not prepare it because at the time I telegraphed him I sent him a copy of that satisfaction of mortgage, so I presume Mrs. Lonkey's counsel prepared that satisfaction. After sending

(Testimony of C. H. Bridges.)

him a copy and before turning over any of the money for the purpose for which it was to be used, and before recording the release, I awaited the receipt of the check. He did not leave the check with me personally when he was in the bank. The correspondence which you have in evidence will disclose that. I wrote him that if he would deposit that amount I would record the satisfaction of mortgage. (Recess.)

I had no knowledge of the amount of the loan that Mr. Kearney was negotiating. I had no knowledge as to the actual lenders of the same. I had no direct knowledge as to what security the lender was to be given for the money loaned. I presumed though that the *the* equity of the heirs of Thomas Hill was furnishing security. I mean the equity the heirs might have in the estate, over and above incumbrances and indebtedness. I was about as close to Mr. Hill in a business way as a banker ordinarily gets with a client. The relationship becomes close. We were quite familiar with most all of his business dealings. The only knowledge I had of the \$8,000 advanced preliminarily was that it was deposited in the bank; it was just an ordinary transaction of deposit. I was not charged with any notice as to how it was to be distributed. It was there subject to the order of the person that put it in.

(Witness here identified a deposit tag, marked Defendants' [99] Exhibit "D," showing that on September 27th there was deposited with Mrs. Lon-

(Testimony of C. H. Bridges.)

key, or to her credit in the Bank of Lassen County by Mary C. Hill the sum of \$5,830.)

Cross-examination.

The financial statements which the bank is required to keep do not result largely in making copies of the ones that are on file and getting the person to sign them. We go into his financial status each year as they are made up. About the only things that the old statements are used for are to copy descriptions of real estate. We usually arrive at a new basis of valuation. Sometimes the loans against the property change, and we make an entirely new statement each year. My bank did not have any mortgage whatever on the Hills at that time. I do not recall that it ever had a mortgage. I knew Mrs. Hill as well as Mr. Hill, very well. If I had ever taken a mortgage I would undoubtedly have followed the custom of taking the signatures of both the husband and the wife.

“Q. These statements are headed, ‘Individual or partnership statements of Thomas Hill, Susanville, California,’ Do you remember whether you had in mind anybody that was in partnership with him at the time of that statement?

“A. No. That was a standard form that we used. In those days we used that particular form. It was imprinted that way and then filled in.

“Q. If some of the property was in his wife’s name and he was holding it in partnership with

(Testimony of C. H. Bridges.)

his wife, that in a statement that would be used, is it not? A. Yes.

“Q. Coming to this transaction with Mr. Kearney, when Mr. Walsh loaned this money to Mrs. Hill you had learned before that from some of her children that they were negotiating a loan from somebody.

“A. At the time we advanced them \$2000, which I think was in July of 1922, Seymour Case told me that he was going to Reno to see Mr. Kearney because he was a friend of his. As a matter of fact, we were all boys together at the University of Nevada. I don't know whether he told me that through business reasons, or just in a friendly way, but I knew he was going to Reno to see Mr. Kearney. [100]

“Q. For the purpose of negotiating a loan?

“A. For the purpose of getting financial assistance, yes.

“Q. You knew, of course, that there was a \$30,000 mortgage to the Farmers & Merchants Bank?

“A. That showed on our statement.”

I knew there was a loan to Mrs. Lonkey, because we had these papers in escrow. They did not tell me at that time that they were going to try to take up the Farmers & Merchants loan. I don't know that they ever told me that they were attempting to get a loan from Mr. Kearney to take up all those papers, because they had talked about a Federal Land Bank loan, and the life insurance company loan, and of many different ways. I can-

(Testimony of C. H. Bridges.)

not recall that they ever told me definitely that Mr. Kearney was going to get them a sufficient loan to lift the Farmers and Merchants draft. In talking about these some source, either from Mr. Sorgi or the Federal Land Bank, or an insurance company, I knew they were trying to get someone who would handle their whole finances. It was their intention, if they were able, to get a loan of sufficient size to take care of all the creditors along with these secured loans. When Mr. Kearney came up there and arranged with me to get a release of the mortgage on the Willow Creek ranch, he did not tell me that he was trying to clear the title of that ranch of that lien, so that he would get a lien on it for his loan. I knew he was trying to clear that second mortgage. I certainly knew that. It certainly would have to be a loan if he cleared it. At that time I did not know, so far as the records were concerned, that loan stood in the name of Mrs. Hill. I knew of the deed after it went of record, but were not those negotiations before that?

“Q. * * * These negotiations that you had with Mr. Kearney were in October and December, were they not, 1922.

“A. December, yes. * * *

“Q. You say you learned of this deed to Mrs. Hill right after it went of record?

“A. I said I learned of it after it went of record, I did not say how soon. [101]

“Q. Didn't you say soon after it went of record?

“A. Yes, soon after, I think.

(Testimony of C. H. Bridges.)

“Q. It is just a little community up there, and you keep track of everything that goes on, don’t you?”

“A. Oh, no, not necessarily. There is a town there of four thousand people.

“Q. When a deed is put on record your bank gets notice of it? A. No, we don’t.

“Q. How did you learn of the deed?”

“A. Just through hearsay.

“Q. And it is your recollection that it was shortly after it was put of record. That is your testimony?”

“A. I cannot say just how long.

“Q. That is what you testified to this morning, isn’t it? A. I believe I did.

“Q. That was put on record in August of that year? A. In August.

“Q. Yes, the first part of August, in fact, on the 8th day of August. * * * How long did you keep the idea that you say you had that this property was worth \$100,000?”

“A. Well, values a year or so after Mr. Hill’s death dropped considerably in farm land.

“Q. * * * About a year after Mr. Hill’s death there was a very sharp drop in the value of land, is that right?”

“A. Yes, I would say so.”

At the time I was having these negotiations with Mr. Kearney by which this mortgage was to be released, in order that he might loan on this property, I not only thought this property was worth \$100,000, but I also knew that this transaction by

(Testimony of C. H. Bridges.)

which Mrs. Lonkey was to release this mortgage would bring in to the property, more cattle, or into the estate of Hill, or to Mrs. Hill, or somebody. It would bring in, in order for the deal to go through, a couple of hundred head more of cattle. I knew that there were about 680 head besides that already covered by the Lonkey mortgage. I knew they were running a butcher concern here in Susanville. I had these statements showing that he valued the property at \$364,000. I do not remember who told me about the deed. I think the \$8,000 that came in the check from Mr. Kearney on the first [102] loan was deposited in our bank to the account of Mrs. Hill. I would infer it was because she drew on our bank for that amount to place to the credit of Mrs. Lonkey. I am assuming that out of the \$8,000 Mrs. Hill immediately paid \$5,830 to Mrs. Lonkey. I don't know any other place where she could get the money, and I assume it must have come from Mr. Kearney, and, of course, that is where it did come from. Before I had this final talk with Mr. Kearney I did not personally talk with Sorgi about his proposed loan. Sorgi never talked over the matter of the loan. He told me he was going out on to the Hill ranch, and I did not inquire into his business and he did not tell me what he was going to do. Mr. Kearney did not talk to me when he came up there about the proposition that they were considering getting his money through Mr. Sorgi. Mr. Kearney never called on me very many times. Mr. Kearney paid \$10,000

(Testimony of C. H. Bridges.)

to the bank in order to get this release from Mrs. Lonkey. He had absolutely nothing further to do with it, as to whether it bought 6,000 head of cattle, or 4,000 head of cattle, or anything else. That is my understanding; it was simply to get the release of the mortgage. So far as he was concerned Mrs. Lonkey could have taken the entire \$10,000.

Redirect Examination.

The transaction or negotiation between me and Mr. Kearney in December, 1922, was for the purpose of securing from Mrs. Lonkey a release of the second mortgage on the Willow Creek ranch. He did not tell me what loan they proposed to make or who the principals were, or asked my advice as to the security, or informed me as to what security they expected to get. [103]

TESTIMONY OF J. E. PARDEE, FOR DEFENDANTS.

I represented Mrs. Lonkey as her attorney in this transaction through which she held a chattel mortgage on the Hill estate. I represented her prior to the time I represented Mrs. Hill. I had knowledge as such attorney of the transaction with reference to the supplemental mortgage which is introduced in evidence, and with reference to the payment of the same. I know how that \$27,200 mortgage was paid. In the first place, as the statements were given to me by both parties, the interest on that

(Testimony of J. E. Pardee.)

\$27,200 for one year was paid in September, 1922. It amounted, at 6 per cent, to \$1,632. Subsequently, but not until 1924, was any other substantial payment made upon it. At that time, October 4, 1924, we made a sale for the Hill estate of cattle. 285 head of cattle were sold to Frank Humphrey. They were covered by the two chattel mortgages that Mrs. Lonkey held. They amounted to \$11,818.25. That payment, as applied to principal and interest, was \$10,413.79 principal and \$1,467.46 interest. After that all the payments that were made on that note were made through me. The cattle were sold from time to time to the Hills Meat Market, which was a corporation known as the Mt. Lassen Packing Co. During the time from the 22d of September, 1925, until the 27th of January, 1926, money came into my hands from the sale of these cattle, and payments were made to the credit of Mrs. Lonkey, which amounted, together with the amount that had been applied on principal out of the Humphrey sale, to the \$27,200. In addition to that there was in the final settlement, as computed, \$1,196.31 interest that was paid, and on the strength of that Mrs. Lonkey released all her claim to the cattle.

(Such release was thereupon offered in evidence, marked [104] Defendants' Exhibit "E.")

All of the \$27,200 note, for the security of which the chattel mortgage was given, was paid from the proceeds of the cattle, except that one year's interest. There was a transaction which the Hills had with Mrs. Lonkey, either in 1921 or 1922. He took

(Testimony of J. E. Pardee.)

an option for the purchase of the Lonkey ranch, which was quite a large ranch in the same valley as the Hill ranch. Afterward, it ripened into an agreement of sale. The deed was drawn and put in escrow in the Bank of Lassen County. The sale price was over \$50,000. There was a provision for payments at certain times. There was a provision for interest. There were some payments of principal made and some payments of interest. Eventually the property was surrendered because we could not carry the transaction through and complete the purchase. Money was paid to Mrs. Lonkey other than the money on this \$27,200 note. I did not become attorney for the Hill estate or for Mrs. Hill until after the Kearney-Walsh note was made.

(Defendants then offered in evidence the deed of trust executed by Hill and wife to Richard Kirman and William J. Harris as trustees for the Farmers & Merchants Bank, marked Defendants' Exhibit "F." The same was in all particulars in accordance with the allegations of the complaint in case No. 198, and provided, among other things, that upon the full payment of the indebtedness secured thereby the property should be reconveyed to the parties of the first part, to wit, Hill and his wife, or their heirs or assigns.

They also offered the reconveyance made by the trustees under the said deed of trust to Mary C. Hill, which reconveyance recited the full payment and discharge of the indebtedness secured thereby; that "said Thomas Hill, husband of Mary C. Hill, did

(Testimony of J. E. Pardee.)

on [105] the 15th day of December, 1917, grant, bargain, sell and convey said premises to Mary C. Hill, by deed made, executed and delivered on said date and recorded in the office of the County Recorder of the County of Lassen, State of California, in Book 97 of Deeds, at page 266." The said reconveyance was received in evidence and marked Defendants' Exhibit "G."

They also offered and there was received in evidence a release of the real estate from the mortgage held by Georgiana F. Lonkey and the same was marked Defendants' Exhibit "H." Said release was dated December 20, 1921, and recorded January 3, 1923, and released the Willow Creek Ranch from the mortgage made on the 10th day of July, 1921, by Thomas Hill and Mary C. Hill, recorded on the 23d day of August, 1921, and contained the following provision: "This release is intended to release all land described in, or referred to in said mortgage from the lien thereof, but is not intended to and does not acknowledge the payment of any part of the principal debt secured by said mortgage; neither does it release therefrom any personal property mentioned or described therein.") [106]

After we commenced the probate proceedings in the Estate of Thomas Hill there was a notice of probate sale offering the Willow Creek ranch for sale. That was what precipitated the first action. That was the only attempt to make a legal sale. We made some attempt to find a purchaser through

(Testimony of J. E. Pardee.)

different agencies. The offer of sale through the probate proceedings was dated September 10, 1925.

I recall a trustee's sale under this property. It was held at Susanville on the platform in front of the courthouse. I was present, and one of the trustees, Thomas A. Kearney, who has since died. Mr. William H. Kearney was there, and Mr. Patrick Walsh, and two of the Hill boys. I do not remember that anybody else was present.

Cross-examination.

The Lonkey mortgage went back to 1921. The \$27,200 plus \$1,632 payments which I have testified to would not discharge the \$27,200 with interest from 1921 to 1926. I know that we paid that much. I knew that at the time that Mr. Kearney advanced the \$8,000 certain portions of that went to pay money to Mrs. Lonkey, \$5,830 to pay her off for certain amounts. That money was given to pay Mrs. Lonkey anything that was accrued in the way of interest and past dues, and at that time there was only a little more than one year's interest accrued. All I know of my own knowledge are the payments which I have testified to and the transaction with Humphrey. Taking all that into consideration there might have been some, and should have been some more paid between September, 1922, and 1924. I do not know whether the sale to Humphrey included the cattle bought with the \$10,000 put up by Mr. Kearney and Mr. Walsh. I know that shortly after this litigation started a stipulation [107] was en-

(Testimony of J. E. Pardee.)

tered into between myself and Mr. Kearney that the property could be sold at any time provided Kearney and Walsh were paid the amount that was owed them. It was made at Sacramento and approved by Judge Kerrigan. So there was plenty of opportunity to sell the property, but not a very good market. In the account in the Estate of Thomas Hill covering the period from August 1, 1922, to December 31, 1923, there is an item "Paid on principal and interest of G. F. Lonkey note and mortgage, \$1,700."

Defendants then offered in evidence the affidavit of the publisher of the notice of publication of said sale, and the same was admitted in evidence and marked Defendants' Exhibit "I." The said notice was dated September 10, 1925, and, among other things, contained the following provision: "It is understood that parcel one (Willow Creek Ranch) is subject to an incumbrance, but bids should be made on the basis of a clear title, all valid indebtedness to be paid by the estate, or to be deducted from the gross purchase."

Defendants also offered and there was received in evidence, and marked Defendants' Exhibit "J," the articles of incorporation of Patrick Walsh and Sons, Incorporated. Said articles were dated January 19, 1918, and provided that the capital of said corporation should be \$400,000, divided into 4,000 shares of \$100 each, of which Patrick Walsh subscribed six shares, William R. Walsh one share, and John M. Walsh, one share, Patrick H. Walsh one share and Mary Walsh one share.

Defendants then offered in evidence the original complaint of plaintiffs in case No. 198, and the same was admitted in evidence, and, omitting the exhibits attached thereto, is as follows: [108]

“In the United States District Court of the Northern District of California, Northern Division.

“IN EQUITY—No. 198.

JOHN M. WALSH and THOMAS A. KEARNEY,
as Trustees, and W. M. KEARNEY and
PATRICK WALSH,

Complainants,

vs.

MARY C. HILL, MRS. SADIE CASE, CLEVE
HILL, JOSEPH HILL, ROBERT EL-
MER HILL, THOMAS GAY HILL,
LAWRENCE HILL, JESSIE I. HILL,
JIMMIE O. HILL, FLORENCE HILL
DOUGLAS; HUBERT W. HILL, MIL-
DRED L. HILL, CHRISTINE V. DeFOR-
EST, MAUD B. McGREGOR, MARY C.
HILL, as Administratrix of the Estate of
THOMAS HILL, Deceased, JOHN DOE,
RICHARD ROE, SALLY MOE First and
SALLY MOE Second,

Defendants.

“COMPLAINT.

“Comes now your complainants, John M. Walsh and Thomas A. Kearney, as Trustees, and W. M. Kearney and Patrick Walsh and complain of de-

fendants, Mary C. Hill, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest, and Maud B. McGregor, and Mary C. Hill, as administratrix of the Estate of Thomas Hill, deceased, John Doe, Richard Roe, Sally Moe First and Sally Moe Second, above named and for cause of suit allege:

“I.

“That the complainants, John M. Walsh, Thomas A. Kearney, W. M. Kearney and Patrick Walsh, and each of them, are residents and inhabitants of the state and district of Nevada. [109]

“II.

“That the said defendants, Mary C. Hill, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred I. Hill, Christine V. DeForest, Maud B. McGregor, Mary C. Hill, as Administratrix of the Estate of Thomas Hill, deceased, John Doe, Richard Roe, Sally Moe First and Sally Moe Second, now are and each of them is and was at all the time and dates hereinafter mentioned citizens, residents and inhabitants of the State of California.

“III.

“That the matter in controversy in this suit, exclusive of interest and costs, exceeds the sum or value of Three Thousand Dollars (\$3,000.00) as is hereinafter more particularly alleged.

“IV.

“That on May 25, 1923, Mary C. Hill was appointed as administratrix of the Estate of Thomas Hill, Deceased, and thereafter duly qualified as such, and is now and at all times after said date last mentioned, has been the duly qualified and acting administratrix of the Estate of Thomas Hill, Deceased.

“V.

“That the defendants Mary C. Hill, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest and Maud B. McGregor are indebted to the complainants Patrick Walsh of Austin, Nevada, and W. M. Kearney, of Reno, Nevada, in the sum of Fifty Thousand Dollars (\$50,000.00) with interest from the first day of February, 1924, on two promissory notes in the words and figures following, to wit:
[110]

“\$8000.00.

Reno, Nevada.

December 20th, 1922.

“McDow xxx ‘One year after date, without grace, for value received, we, or either of us, promise to pay to M. Kearney, or order, at Reno, Nevada, the sum of Eight Thousand Dollars in lawful money of the United States of America, with interest thereon in like lawful money at the rate of eight per cent. per annum from date until paid. Interest payable semi-annually, also after judgment.

“ ‘The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker or makers thereof, or either of them. In the event of the non-payment of this said note at maturity, or at its collection by suit, we, or either of us, agree to pay all expenses that may be incurred thereby, including a reasonable attorney’s fee, and to that end bind ourselves, our heirs, executors, administrators and assigns forever. For the purpose of attachment or levy of execution, this note shall be payable wherever we, or either of us, may be situated, at the option of the holder.

“ ‘MARY C. HILL.

“ ‘MRS. SADIE CASE.

“ ‘CLEVE HILL.

“ ‘JOSEPH HILL.

“ ‘ROBERT ELMER HILL.

“ ‘THOMAS GAY HILL.

“ ‘LAWRENCE HILL.

“ ‘JESSIE I. HILL.

“ ‘JIMMIE O. HILL.

“ ‘FLORENCE HILL DOUGLAS.

“ ‘HUBERT W. HILL.

“ ‘MILDRED L. HILL.

“ ‘CHRISTINE V. DeFOREST.

“ ‘MAUD B. McGREGOR.

“ ‘By MARY C. HILL,

“ ‘Their Attorney-in-fact.

“(1.60 Documentary stamps canceled)’
“\$42,000.00. Reno, Nevada,
December 20th, 1922.

“McDow xxx ‘Three years after date, without grace, for value received, we or either of us, promise to pay to PATRICK WALSH, or order, at Austin, Nevada, the sum of Forty-two Thousand Dollars in lawful money of the United States of America, with interest thereon in like lawful money at the rate of eight per cent. per annum from date until paid. Interest payable semi-annually, also after judgment.
[111]

“ ‘The endorsers, sureties, guarantors and assignors, severally waive presentation for payment, protest and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders, to them or either of them, or to the maker or makers thereof, or either of them. In the event of the non-payment of this said note at maturity, or its collection by suit, we, or either of us, agree to pay all expenses that may be incurred thereby, including a reasonable attorney’s fee, and to that end bind ourselves, our heirs, executors, administrators, and assigns forever. For the purpose of attachment by levy or execution, this

note shall be payable wherever we, or either of us, may be situated, at the option of the holder.

“ ‘MARY C. HILL.

“ ‘MRS. SADIE CASE.

“ ‘CLEVE HILL.

“ ‘JOSEPH HILL.

“ ‘ROBERT ELMER HILL.

“ ‘THOMAS GAY HILL.

“ ‘LAWRENCE HILL.

“ ‘JESSIE I. HILL.

“ ‘JIMMIE O. HILL.

“ ‘FLORENCE HILL DOUGLAS.

“ ‘HUBERT W. HILL.

“ ‘MILDRED L. HILL.

“ ‘CHRISTINE V. DeFOREST.

“ ‘MAUD B. McGREGOR.

“ ‘By MARY C. HILL,

“ ‘Their Attorney-in-fact.’

“VI.

“That at the time of delivering said notes and each of them and to secure the payment of said principal sum and the interest thereon as mentioned in said notes according to the tenor thereof, the defendants duly executed and delivered to the plaintiffs herein, John M. Walsh and Thomas A. Kearney, as Trustees, their deed of trust bearing date the 20th day of December, 1922, conveying the following described premises:

The W. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$
and the SW. $\frac{1}{4}$ of Section 2; the E. $\frac{1}{2}$, SW. $\frac{1}{4}$,
S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and the NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$

of Section 3; the E. $\frac{1}{2}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Section 4; the E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of Section 8; the N. $\frac{1}{2}$ of N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 9; the N. $\frac{1}{2}$ of N. $\frac{1}{2}$ and SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 10; the W. $\frac{1}{2}$, W. $\frac{1}{2}$ of E. $\frac{1}{2}$ and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 11; the NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of Section 14; also a piece of land bounded as follows: Beginning at a point 10 chains west of the corner of Sections 11-12-13 and 14 and running thence South 15 chains; thence South $58^{\circ} 45'$ West, 11.72 chains to the quarter-quarter line; [112] thence north along said quarter-quarter line 21.10 chains to the line between Sections 11 and 14; thence east 10 chains to the place of beginning, being in said Section 14, all in township 31 North, Range 12 East, M. D. M.

Also the SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Section 34, and the W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 35, in Township 32 North, Range 12 East, M. D. M.

Also the N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 2, and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 3, in Township 31 North, Range 11 East, M. D. M., containing in all 3,218.58 acres, more or less according to Government Survey.

A copy of said trust deed is attached hereto and marked 'Exhibit A' which the complainants request be considered as though plead *in haec verba*.

“VII.

“That the said trust deed was duly acknowledged

and certified so as to entitle it to be recorded, and on the 3d day of January, 1923, the same was duly recorded in the office of the County Recorder of Lassen County, California, at page 249 and following, in Book C of Trust Deeds.

“VIII.

“That among other things it is provided in said trust deed to secure the payment to the said parties of the third part (W. M. Kearney and Patrick Walsh) of the sum of Eight Thousand Dollars (\$8,000.00) and Forty-two Thousand Dollars (\$42,000.00), respectively, lawful money of the United States of America, and interest thereon according to the terms of the two promissory notes set forth herein, made, executed and delivered by the said parties of the first part and payable to the order of said parties of the third part (W. M. Kearney and Patrick Walsh) respectively; also, to secure the payment of any and all sums of money, checks, bills, promissory notes, bonds, liens, balances of account, overdrafts or other indebtedness, which are [113] now, or may hereafter during the continuance of this trust, be, or become, due or owing from the parties of the first part (defendants herein), or either of them, to the said parties of the third part (W. M. Kearney and Patrick Walsh), or for which said parties of the first part (defendants herein), or either of them, may be, or shall become in any manner liable to the said parties of the third part (W. M. Kearney and Patrick Walsh) together with interest on all such indebtedness, from

the date and creation of the same to the date of the repayment to the said parties of the third part (W. M. Kearney and Patrick Walsh), at the rate of eight per cent per annum on all such indebtedness, or such other rate as may be agreed upon where the indebtedness is evidenced by an instrument in writing. Also, to secure the repayment, on demand, of any sum, or sums, advanced at any time during the continuance of this trust by the party of the third part (W. M. Kearney and Patrick Walsh), for the payment of any taxes, assessments, liens or encumbrances now subsisting or which may hereafter be levied or imposed upon said premises, or any part thereof, which, may, in the judgment of the parties of the third part (W. M. Kearney and Patrick Walsh) affect such premises or this trust. Also, to secure the repayment, on demand, of any and all sums paid out by the parties of the second part (plaintiffs) John M. Walsh and Thomas A. Kearney as Trustees herein or third part (W. M. Kearney and Patrick Walsh) in intervening in, prosecuting or defending any action or proceeding, wherever, in their judgment, it may be necessary to do so, in order to protect the title to said property or this trust; also, to secure the repayment by parties of the first part (defendants herein), of the expenses incurred for such repairs or prevention of waste upon said premises as may have been deemed [114] necessary by parties of the third part (W. M. Kearney and Patrick Walsh), or their successors or assigns. Also, to secure the payment of interest on all of said ad-

vances and expenses from the time they are made or incurred to the time of repayment, at the rate of eight per cent per annum, payable semi-annually, after the 20th day of December, 1922, or such other rate as may be expressly agreed upon in writing.

“Said trust deed further provides: ‘If default shall be made in the payment of said note first mentioned, or any portion thereof, or any installment of interest thereon when due, or any indebtedness evidenced by any instrument in writing, as aforesaid, or in the re-imbusement of any moneys, as herein provided to be paid out and expended, or any advances or taxes, liens, encumbrances, etc., or any other sum due to parties of the third part, with the interest thereon, on demand, as hereinabove expressed, then it shall be lawful for the parties of the second part, or the survivor of them, their successors or assigns, on the application of the parties of the third part, or their successors or assigns, to sell the above granted premises, or such part thereof, as in their discretion, they shall find it necessary to sell in order to accomplish the objects of this trust.’

“Said trust deed further provides: ‘The parties of the second part, or the parties of the third part, may commence, prosecute, intervene in, or defend any action or proceeding in any court of competent jurisdiction, whenever, in their judgment it may be necessary to do so, in order to protect the title to said property, and may at any time, at their option, commence and maintain suit in any court of competent jurisdiction to obtain the aid and direction

of said court in the execution by them of the trusts, or any of them herein expressed or contained, and may [115] in such suit obtain orders or decrees, interlocutory or final, of said court, directing the execution of said trust, and confirming and approving their acts, or any of them, or any sales or conveyances made by them, and adjudging the validity thereof, and directing that the purchasers of the lands and premises sold and conveyed be let into immediate possession thereof, and providing for orders of court or other process, requiring the sheriff of the county in which said lands and premises are situated to place and maintain the said purchasers to quiet and peaceable possession of the lands and premises so purchased by them, and the whole thereof.

“In case default be made in the payment of any sum or sums hereinabove mentioned, the Trustees, their successors or assigns, shall be entitled at any time, at their option, and either by themselves, or by their duly authorized agent, to enter upon and take possession of the above granted premises, or any part thereof, and remove all persons therefrom, and do and perform such acts of repair or cultivation, as may be necessary or proper to conserve the value thereof, and to collect and receive the rents, issues and profits thereof, and apply the same in the manner hereinbefore specified in respect of proceeds of sale of said premises, and to do such other acts and to exercise such other power in respect to said premises as said trustees may deem necessary or proper to conserve the value thereof, and the

expenses therein incurred shall be deemed to be a portion of the expense of this trust, and secured thereby as hereinbefore provided.

“IX.

“That the defendants, first parties named in said trust deed have failed, neglected and refused to pay the interest on [116] said notes since the first day of February, 1924, and are in default thereof for a period of more than one year; that the defendants have failed, neglected and refused to pay the note of Eight Thousand Dollars (\$8000.00) hereinabove mentioned dated December 20, 1922, due and payable one year after date, and are in default in the payment of said note.

“That demand has been made upon defendants for the payment of said note and principal sum and sums above stated but that notwithstanding said demand the defendants still and now continue to refuse to pay the said interest or principal or any part thereof.

“That according to the terms of said trust deed the entire principal sum represented by the two promissory notes, to wit: Eight Thousand Dollars (\$8000.00) and Forty-two Thousand Dollars (\$42,000.00) respectively, together with the interest thereon from the first day of February, 1924, is now due, owing and unpaid from the defendants to the complainants W. M. Kearney and Patrick Walsh, parties of the third part mentioned in said trust deed.

“X.

“That the parties of the third part in said trust deed, namely, W. M. Kearney and Patrick Walsh, have applied for and requested the said trustees to bring this action and also to sell the said premises in accordance with the terms of said trust deed.

“XI.

“That at the time of the delivery of said notes aforesaid and to further secure the payments of said principal sum and interest, costs, advances, and attorney fees as mentioned in said notes according to the tenor thereof defendants, Mary C. Hill, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, [117] Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest and Maud B. McGregor, duly made, executed, and delivered to complainants, W. M. Kearney and Patrick Walsh, their chattel mortgage bearing date the 20th day of December, 1922, conveying the following personal property:

1 mare branded ‘E H’ on left stifle; 2 mares branded ‘F D’ on left shoulder; 11 horses branded ‘A J’ on right shoulder; 4 horses branded ‘C L’ on left shoulder; 4 work horses, 2 work mares and 2 saddle horses (brands not distinguishable); 1 grey percheron stallion, weight about 1800 lbs. (no brand); 2 sets driving harness; 10 sets leather work harness; 2 spring wagons; 4 farm wagons with hay racks; 2 wagons with farm beds; 2 Deering mowers; 2

John Deere mowers; 1 International side delivery rake; 1 Moline; 1 Deering sulkey rake; 5 Dane buckrakes; 2 P. and O. fine bottom tractor plows; 1 Holt 6 disk tractor plow; 1 45 H. P. Holt tractor #20,577; 1 J. I. C. 32-54 separator, No. 22,879;

Also all other implements on the ranch not enumerated and tools and equipment of the blacksmith and harness shops and other buildings, all of said property being situated on the Hill Willow Creek Ranch, Lassen County, California; also the crops on said ranch and to be grown thereon subject to the condition that said crops may be used while the conditions of this mortgage and a certain trust deed of even date by Mary C. Hill, et al., to Patrick Walsh and W. M. Kearney are fulfilled and in good standing but this right of use ceases immediately upon there being a default in any of the conditions of either of said aforesaid instruments.

“Said mortgage was conditioned as set forth in the said chattel mortgage which is attached hereto and marked ‘Exhibit B, which complainants request the Court to consider as having been plead *in haec verba*.

“XII.

“That said mortgage was duly acknowledged and certified so as to entitle it to be recorded, and on the 3d day of January, 1923, the same was duly recorded in the office of the County Recorder of

Lassen County, California, in Book I of *Chattel Mortgaged*, at page 410 and following. [118]

“XIII.

“That complainants, W. M. Kearney and Patrick Walsh, are the owners and holders of said promissory notes and chattel mortgage; that the defendants claim to have some interest in or lien on said mortgaged premises, but all of said claims, if any, are junior and subordinate to the lien of plaintiffs created by virtue of said chattel mortgage.

“XIV.

“That Mary C. Hill, as administratrix of the Estate of Thomas Hill, deceased, claims some right, title or interest in or lien on the said described premises, but that all of said claims, if any, are junior and subordinate to the title evidenced by said trust deed.

“XV.

“That defendants John Doe, Richard Roe, Sally Moe First and Sally Moe Second claim some right, title or interest in or to the premises hereinabove described in said trust deed, their true names being unknown to the complainants but whose claims are wholly fictitious, junior and subordinate to the rights and claims of complainants herein; that their true names will be substituted when and if ascertained.

“XVI.

“That according to information and belief defendant Mary C. Hill, as Administratrix of the Estate of Thomas Hill, deceased, threatens to sell

the said premises in disregard of said trust deed and to create a cloud upon the title of said property described in the trust deed aforesad and is about to perform acts offering the said property for sale in such manner, as complainants are informed and believe, as will create a cloud upon the right and title of the complainants herein, John M. [119] Walsh and Thomas A. Kearney, and in and to the said premises as well as the title to the premises, and to that end as complainants are informed and believe the said defendant Mary C. Hill, as administratrix of the Estate of Thomas Hill, Deceased, is advertising the said property for sale in disregard of the legal title expressed in said deed, well knowing that the legal title thereto stands in the complainants, John M. Walsh and Thomas A. Kearney, as Trustees.

“XVII.

“That the complainants have no plain, speedy, or adequate remedy at law in that the defendants and each of them is, according to information and belief, insolvent and unable to respond in damages; that the acts complained of which are about to be performed as herein alleged in placing a cloud upon the right and title of complainants, will cause a multiplicity of suits; that the damages resulting therefrom to the complainants mentioned in said trust deed will be irreparable and of such a character that they cannot be readily measured in terms of dollars and cents, and that complainants only redress is in a court of equity.

“WHEREFORE complainants pray the aid of the Honorable Court that the defendants and each and every one of them, their attorneys, agents, servants, and all persons acting by or through or for them be restrained and enjoined from doing any act or thing which would in any way impair the right or title of complainants in and to the premises described in the said trust deed referred to in the complaint and from selling or making a purported sale of said premises described in the complaint, except in full recognition of the rights and title of the complainants as expressed in the said trust deed herein, and from doing any [120] act or thing which would defeat the title, purpose or intent expressed in said deed of trust, and from in any way or manner interfering with the rights of complainants in carrying out the trust or the sale of said premises according to the true intent and meaning expressed in said trust deed upon the default as pleaded herein.

“Complainants further pray for an order and decree authorizing the sale of said property mentioned in the chattel mortgage pleaded herein according to law and the practice of this court and the proceeds applied in payment of the amount due to the complainants W. M. Kearney and Patrick Walsh.

“That the defendants, Mary C. Hill, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest, Maud B. McGregor, and Mary C. Hill, as administratrix

of the Estate of Thomas Hill, Deceased, and each of them, and all persons claiming under them, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all rights, claim or equity of redemption in the said personal property covered by said chattel mortgage and every part thereof and that defendants may be adjudged to pay any deficiency which may remain after applying all the proceeds of the sale of said personal property properly applicable to the satisfaction of said judgment.

“That the complainants, W. M. Kearney and Patrick Walsh, have judgment against the defendants, Mary C. Hill, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest and Maud B. McGregor, for the sum of Fifty Thousand [121] Dollars (\$50,000.00) together with interest thereon at the rate of eight per cent per annum from December 20, 1922, calculated semi-annually on the 20th day of June and the 20th day of December of each year with interest upon said interest from the said interest due dates as specified herein, crediting the following interest payments on account:

June 23, 1923—\$2000.00

Feb. 7, 1924—\$1000.00

Oct. 29, 1924—\$ 750.00

Nov. 15, 1924—\$ 750.00

“That the complainants may be a purchaser or purchasers at said sale.

“For costs of suit and for attorneys fees in the sum of ten per cent of the amount of said judgment.

“That the complainants, John M. Walsh and Thomas A. Kearney, as Trustees, be authorized to take immediate possession of the real premises described in the complaint pursuant to the terms of said trust deed.

“That the Court confirm the execution by the Trustees of the trust specified in said trust deed authorizing and confirming the sale which Trustees are now about to make, and adjudging the validity thereof and all the details according to the powers expressed in said trust deed.

“That the complainants may have such other and further relief in the premises as to this court may seem just and equitable, including the relief that the pleadings and proof may warrant.

“W. M. KEARNEY,

“W. K. S. BROWN,

“Solicitors for Plaintiffs. [122]

“State of Nevada,
County of Washoe,—ss.

“Thomas A. Kearney, being first duly sworn, deposes and says:

“That he is one of the plaintiffs in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true;

[Title of Court and Cause—Nos. 198—Eq.—208—Eq.]

Before KERRIGAN, District Judge.

November 22, 1929.

MEMORANDUM OPINION.

On examination of the records in these two cases, I reach the following conclusions:

1. There was no delivery of the deed to the property involved herein from Thomas Hill to his wife, Mary C. Hill, during the lifetime of the grantor.

2. Patrick Walsh & Sons, Incorporated, W. M. Kearney and Patrick Walsh failed to obtain a valid first lien on the fee-simple title to the property involved herein.

3. There is no estoppel against the estate of Thomas Hill which will preclude Mary C. Hill, as administratrix, from denying the delivery of the above-mentioned deed, either by way of defense in No. 198, or as plaintiff in No. 208. [125]

4. There is no estoppel against the Bank of Lassen County which will preclude it from denying the delivery of the same deed.

5. Mary C. Hill, individually, and the other heirs of Thomas Hill joining in the trust deed are estopped to deny the validity of the lien thus created, and any right or title in or to the property, or moneys acquired from a probate sale thereof, to which they may be entitled as heirs at law of Thomas Hill, is subject to said deed of trust.

6. Patrick Walsh & Sons, Incorporated, W. M. Kearney and Patrick Walsh are not entitled to be subrogated to the prior liens upon the property discharged with funds loaned on security of the invalid trust deed. The right to subrogate involves the application of a rule of property, as to which this court will conform to the decisions of the courts of the State of California where the land is situated. Under the rule of *Brown vs. Rouse*, 125 Cal. 645, and *Guy vs. Du Prey*, 16 Cal. 196, there is no right of subrogation here. See, also, note, 43 A. L. R. 1393, 1400.

Let decrees be prepared in the respective cases in accordance with these conclusions. The several parties to bear their own costs.

FRANK H. KERRIGAN,
U. S. District Judge.

[Endorsed]: Filed Nov. 22, 1929. [126]

In the Northern Division of the United States District Court, for the Northern District of California.

IN EQUITY—No. 198.

PATRICK WALSH & SONS INCORPORATED,
a Corporation, W. M. KEARNEY and PAT-
RICK WALSH,

Complainants,

vs.

MARY C. HILL, MRS. SADIE CASE, CLEVE
HILL, JOSEPH HILL, ROBERT ELMER

HILL, THOMAS GAY HILL, LAWRENCE HILL, JESSIE I. HILL, JIMMIE O. HILL, FLORENCE HILL DOUGLAS, HUBERT W. HILL, MILDRED L. HILL, CHRISTINE V. DeFOREST, MAUDE B. McGREGOR, MARY C. HILL, as Administratrix of the Estate of THOMAS HILL, Deceased, JOHN DOE, RICHARD ROE, SALLY MOE FIRST and SALLY MOE SECOND, and MARY C. HILL, as Substituted Defendant for CLEVE HILL, Deceased,

Defendants.

DECREE.

This cause came on to be heard on the 6th day of July, 1928, and evidence being offered the cause was thereafter argued by counsel, and the Court having made and filed its Memorandum Opinion herein on the 19th day of October, 1928; and the plaintiffs having thereafter, and before the entry of decree herein, been granted permission by the Court to amend their complaint, and an answer to said amended complaint having been filed, and further evidence having been taken and heard by the Court on the 6th day of May, 1929, and the cause again argued by counsel; the Court, on November 22, 1929, ordered that a decree be signed, filed and entered herein in accordance with the memorandum opinion of the Court on file,—

IT IS HEREBY ORDERED, ADJUDGED and DECREED, in accordance with said Memorandum Opinion, as follows, to wit:

(1) That the certain deed set forth in the pleadings, executed by Thomas Hill as grantor, to Mary C. Hill, his wife, as grantee, [127] and dated December 15, 1917, was not delivered to the grantee during the lifetime of the grantor and did not operate to convey to said grantee any title to the land therein described.

(2) That thereafter the said Thomas Hill died intestate and the title to said lands vested in his heirs at law, subject, however, to administration, and to the power of the Court in probate to subject the said property to the payment of the decedent's debts, the family allowance, and expenses of administration; and that, therefore, the plaintiffs herein are not entitled to quiet their title as against the defendant Mary C. Hill, as administratrix of the estate of Thomas Hill, deceased.

(3) That Patrick Walsh and Sons, Incorporated, W. M. Kearney, and Patrick Walsh failed to obtain a valid first lien on the property involved herein, by, through, or under the deed of trust set out in plaintiffs' bill of complaint herein.

(4) That there is no estoppel against the estate of Thomas Hill, deceased, which precludes Mary C. Hill, as administratrix of said estate, from denying the delivery of the deed above mentioned from Thomas Hill to his wife, Mary C. Hill.

(5) That Mary C. Hill, individually, and the other heirs at law of Thomas Hill, deceased, who

joined in the execution of said deed of trust, are estopped to deny the lien created by said deed of trust; and that any right or title in or to the property or moneys acquired, or to be acquired, from a probate sale of said property, to which they may be entitled as heirs at law of said Thomas Hill, deceased, or otherwise, is subject to said deed of trust, and must be paid (or distributed) to the plaintiffs in this action.

(6) That Patrick Walsh & Sons, Incorporated, W. M. Kearney and Patrick Walsh are not entitled to be subrogated to the prior liens upon the property involved herein, which prior liens were discharged with the funds loaned on the security of the aforesaid [128] deed of trust.

(7) That the several parties hereto shall each bear their own costs.

(8) The lands hereinbefore referred to and affected by this decree are situate in the County of Lassen, State of California, and are described as follows, to wit:

The W. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the SW. $\frac{1}{4}$ of Section 2; the E. $\frac{1}{2}$, SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and the NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 3; the E. $\frac{1}{2}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Section 4; the E. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of Section 8; the N. $\frac{1}{2}$, N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 9; the N. $\frac{1}{2}$ of N. $\frac{1}{2}$ and the SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Section 10; the W. $\frac{1}{2}$, W. $\frac{1}{2}$ of E. $\frac{1}{2}$, and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 11; the NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of Section 14;

also a piece of land bounded as follows: Beginning at a point 10 chains west of the corner of Sections 11-12-13 and 14, and running thence South 15 chains; thence South $58^{\circ} 45'$ West, 11.72 chains to the quarter-quarter line; thence north along said quarter-quarter line 21.10 chains to the line between Sections 11 and 14; thence east 10 chains to the place of beginning, being in said Section 14, all in Township 31 North, Range 12 East, M. D. M.

Also the SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Section 34, and the W. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 35, in Township 32 North, Range 12 East, M. D. M.

Also the N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 2, and the E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 3, in Township 31 North, Range 11 East, M. D. M., containing in all 3,218.58 acres, more or less, according to Government Survey.

Given this 13th day of December, 1929.

FRANK H. KERRIGAN,
District Judge.

[Endorsed]: Filed and entered Dec. 14, 1929.
[129]

[Title of Court and Cause.]

PETITION FOR ORDER ALLOWING AP-
PEAL.

To the Honorable the Judges of the United States
District Court for the Northern District of
California:

The complainants above named, feeling themselves aggrieved by the judgment of this Honorable Court made and entered in this cause on the 12th day of December, 1929, do, through their undersigned attorneys, respectfully petition and pray for the allowance of an appeal from said judgment to the United States Circuit Court of Appeals of the Ninth Circuit under and according to the laws of the United States in such cases made and provided, and that an order be made fixing the amount of security to be given by the complainants and appellants, conditioned as the law directs; and that upon the giving of such bond as may be required, all further proceedings be suspended and stayed until the determination of said appeal by the United States Circuit Court of Appeals, and [130] that this court further make an order herein continuing in force pending said appeal the temporary injunction heretofore granted by said court.

W. M. KEARNEY.

N. J. BARRY,

EDWARD F. TREADWELL,

Solicitors for Complainants and Appellants.

[Endorsed]: Filed Jan. 20, 1930. [131]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now come the complainants above named and in connection with their petition for an order allowing an appeal in said cause, assign the following errors which they aver occurred on the trial thereof, and upon which they rely to reverse the judgment entered herein as appears of record:

1. The Court erred in holding that there was no delivery of the deed to the property involved herein from Thomas Hill to his wife, Mary C. Hill, during the lifetime of the grantor.

2. The Court erred in holding that Patrick Walsh & Sons, Inc., W. M. Kearney and Patrick Walsh failed to obtain a valid first lien on the fee-simple title to the property involved herein.

3. The Court erred in holding that there is no estoppel against the estate of Thomas Hill which will preclude Mary C. Hill, as administratrix, from denying the delivery of the above-mentioned deed.
[132]

4. The Court erred in holding that there is no estoppel against the Bank of Lassen County which will preclude it from denying the delivery of the said deed.

5. The Court erred in holding that Patrick Walsh & Sons, Inc., W. M. Kearney and Patrick Walsh are not entitled to be subrogated to the prior liens upon the property discharged with funds

loaned on security of the deed of trust made by said Mary C. Hill to complainants.

WHEREFORE, said complainants and appellants pray that the said decree be reversed.

W. M. KEARNEY,

N. J. BARRY,

EDWARD F. TREADWELL,

Solicitors for Complainants and Appellants.

[Endorsed]: Filed Jan. 20, 1930. [133]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The complainants above named having heretofore filed their petition for an order allowing an appeal from the judgment of this Court heretofore entered herein to the United States Circuit Court of Appeals for the Ninth Circuit, and also praying that an order be made fixing the amount of security which complainants and appellants should give and furnish upon said appeal, and that upon the giving of said security all further proceedings be suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals, and that said Court further make an order continuing in force the temporary injunction heretofore granted by said court.

NOW, THEREFORE, IT IS ORDERED that the prayer of said petition be allowed, and that an appeal be and the same is hereby allowed. [134]

IT IS FURTHER ORDERED that, upon the filing with the Clerk of this court by complainants and appellants of a good and sufficient bond in the sum of \$1,000, said bond to be approved by the Court, all further proceedings be and they are hereby suspended and stayed until the determination of said appeal by the United States Circuit Court of Appeals.

AND IT IS FURTHER ORDERED that the temporary injunction heretofore granted in said cause be and the same hereby is continued in force pending the said appeal and until the final determination thereof.

Dated this 20th day of January, 1930.

FRANK H. KERRIGAN,
District Judge.

[Endorsed]: Filed Jan. 20, 1930. [135]

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that Patrick Walsh & Sons, Inc., a corporation (substituted as complainants in the place and stead of John M. Walsh and Thomas A. Kearney, as trustees), W. M. Kearney, and W. S. Brown, as executor of the last will and testament of Patrick Walsh, deceased (substituted as complainant in the place and stead of Patrick Walsh), as principals, and American Surety Company of New York, a corpo-

ration organized and existing under the laws of the State of New York, and duly authorized to transact business in the State of California, as surety, are held and firmly bound unto Mary C. Hill, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest, Maude B. McGregor, Mary C. Hill as Administratrix of the Estate of Thomas Hill, deceased, John Doe, Richard Roe, Sally Moe, First and Sally Moe Second, in the full and just sum of \$1,000, to be paid to said defendants, [136] their certain attorneys, executors, administrators, administrators or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

WHEREAS, lately in the Northern Division of the District Court of the United States for the Northern District of California, in a suit depending in said court between the above-named complainants and defendants a judgment was rendered in favor of said defendants and against said complainants, and

WHEREAS, said complainants having obtained from the above-entitled court an order allowing an appeal to reverse the judgment in said cause and a citation directed to said defendants citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the

Ninth Circuit to be holden in the City and County of San Francisco, State of California,—

NOW, THEREFORE, the condition of the above obligation is such, that if the complainants and appellants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

IT IS FURTHER STIPULATED as a part of the foregoing bond, that in case of the breach of any condition thereof, the above-named District Court may, upon notice to the surety above named, proceed summarily in said action or suit to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against said surety and award execution therefor.

IN WITNESS WHEREOF, we have hereunto set our hands and seals [137] and caused these presents to be executed this 27th day of December, 1929.

W. M. KEARNEY.

AMERICAN SURETY COMPANY OF
NEW YORK.

By K. F. WARRACK,
Resident Vice-President.

Attest: E. C. MILLER,
Resident Assistant Secretary.

The foregoing bond is hereby approved this 20th day of Jan., 1930.

FRANK H. KERRIGAN,
District Judge.

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in the above-entitled cause to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, incorporating therein the following portions of the record, to wit:

1. Amended complaint.
2. Answer to plaintiff's amended complaint.
3. Memorandum opinion.
4. Order to set aside submission.
5. Order of consolidation.
6. Condensed statement of testimony and evidence.
7. Second memorandum opinion.
8. Decree.
9. Petition for order allowing appeal. [139]
11. Assignment of errors.
12. Order allowing appeal.
13. Bond on appeal with order approving same.
14. Citation on appeal with proof of service.
15. Praecipe for transcript of record.

W. M. KEARNEY,
N. J. BARRY,
EDWARD F. TREADWELL,
Solicitors for Complainants and Appellants.

Due service and receipt of copy of within acknowledged this 24th day of January, 1930.

J. E. PARDEE and
R. M. RANKIN.

[Endorsed]: Filed Jan. 29, 1930. [140]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 140 pages, numbered from 1 to 140, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of Patrick Walsh & Sons, Incorporated, etc., et al., vs. Mary C. Hill et al., Equity No. 198, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal, copy of which is embodied herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Sixty-three and 50/100 (\$63.50) Dollars, and that the same has been paid to me by the attorneys for appellants herein.

Annexed hereto is the original citation on appeal.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, this 15th day of February, A. D. 1930.

[Seal]

WALTER B. MALING,
Clerk.

By F. M. Lampert,
Deputy Clerk. [141]

[Title of Court and Cause.]

CITATION.

The President of the United States to Mary C. Hill, Mrs. Sadie Case, Cleve Hill, Joseph Hill, Robert Elmer Hill, Thomas Gay Hill, Lawrence Hill, Jessie I. Hill, Jimmie O. Hill, Florence Hill Douglas, Hubert W. Hill, Mildred L. Hill, Christine V. DeForest, Maude B. McGregor, Mary C. Hill, as Administratrix of the Estate of Thomas Hill, Deceased, John Doe, Richard Roe, Sally Moe First and Sally Moe Second, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City and County of San Francisco, State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal duly made and now on file in the office of the Clerk of the above-entitled court, wherein complainants above named are appellants and you are appellees, to show cause, if any there be, why the judgment rendered against

said appellants, as in the said order allowing the appeal mentioned, should not be corrected and why speedy justice should not [142] be done to the parties in that behalf.

WITNESS the Honorable FRANK H. KERRIGAN, Judge of the United States District Court for the Northern District of California, this 20th day of January, 1930.

FRANK H. KERRIGAN,
District Judge.

Receipt of a copy of the foregoing citation, together with a copy of order allowing appeal and a copy of assignment of errors, is acknowledged this — day of ———, 1930.

Solicitors for Defendants and Respondents. [143]

[Endorsed]: Citation. Filed Jan. 20, 1930.

[Title of Court and Cause.]

ADMISSION OF SERVICE OF CITATION.

Due service of citation on appeal in the above-entitled suit is hereby admitted this 24th day of January, 1930.

J. E. PARDEE,
R. M. RANKIN,
Solicitors for Defendants.

[Endorsed]: Filed Jan. 29, 1930. [144]

[Endorsed]: No. 6075. United States Circuit Court of Appeals for the Ninth Circuit. Patrick Walsh & Sons, Inc., a Corporation (Substituted as Complainant in the Place and Stead of John M. Walsh and Thomas A. Kearney, as Trustees), W. M. Kearney and W. S. Brown, as Executor of the Last Will and Testament of Patrick Walsh, Deceased (Substituted as Complainant in the Place and Stead of Patrick Walsh), Appellants, vs. Mary C. Hill et al., Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed February 17, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.